
Appeal Decision

Site visit made on 11 August 2021

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 20th August 2021

Appeal Ref: APP/T5150/C/20/3255848

2 Ledway Drive, Wembley HA9 9TQ

- 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 Mr Naeem Siddique against an enforcement notice issued by the Council of the London Borough of Brent.
- The enforcement notice was issued on 2 June 2020.
- The breach of planning control as alleged in the notice is: Without planning permission, the material change of use from residential to a mixed use of residential and car repair, breaking and storage of vehicles, parts, and equipment
- The requirements of the notice are
 1. Cease the use of the premises for car repair, breaking and storage of vehicles, parts, and equipment
 2. Remove all vehicles, parts, equipment, other paraphernalia associated with the unauthorised change of use from the premises.
- The period for compliance with the requirements is 3 months
- The appeal is proceeding on the grounds set out in section 174(2)(b) of the Town and Country Planning Act 1990 as amended.

Summary of Decision : The appeal succeeds in part and the enforcement notice is upheld as corrected in the terms set out below

Decision

1. The appeal succeeds in part and it is directed that the enforcement notice is varied by:
 - (1) Deleting the wording "breaking and storage of vehicles, parts and equipment from the allegation so that it reads "Without planning permission, the material change of use from residential to a mixed use of residential and car repair."
 - (2) Deleting the wording of requirements 1 and 2 in full and replacing them with
 1. Cease the use of the premises for car repair
 2. Remove all vehicles associated with the unauthorised change of use from the premises.
2. Subject to these corrections, the appeal is dismissed and the enforcement notice is upheld.

Procedural Matters

3. With a ground (b) appeal only, a site visit is not undertaken as a matter of course. Any activity occurring at the time of the site visit is not directly relevant to whether or not the breach of planning control alleged had taken place as a matter of fact at the time of the issue of the notice which in this case was June 2020. However, an unaccompanied visit to see the context of the site did take place. The Council indicated in its evidence that the unauthorised use may have ceased and there was no activity on site at the time of my visit and only one car on the driveway. Nevertheless, the appeal still falls to be determined.

The appeal under ground (b)

4. An appeal under ground (b) is that the matters stated in the notice have not occurred as a matter of fact. The burden of proof is on the appellant and the relevant test is the balance of probabilities. The allegation made by the Council is that the use of the dwelling became a mixed use in that as well as residential use, car repairs and breaking and storage of vehicles, parts and equipment were taking place around the time of the issue of the notice.
5. For there to be a material change of use, there needs to be some significant difference in the character from what has gone on previously. The Council indicates that a complaint was first made about the use of the appeal site for car repairs in January 2018 and the next complaint was then made in May 2020. The notice was served on the 2 June 2020. Although a similar complaint was made in 2018, I am considering whether the breach had occurred as a matter of fact around the time of the service of the notice in June 2020.
6. The Council and interested third parties have both submitted two photographs dated the 30 April 2020 and seven photographs taken on the 2 May 2020 with third parties submitting some additional photographs. The two photographs taken on the 30 April 2020 show a car without a door and another car without a number plate. A note says that the car without the number plate came off a loader. There are other cars on the driveway.
7. The photographs taken on the 2 May 2020 show a damaged body of a car which is shown on the drive and also on the main road driving away from the property. A note states that other cars on the road are connected with car repair. There are seven cars in one photograph including the car with no door.
8. Third party representations from nearby residents and a local councillor are consistent and refer to cars being repaired on the road due to lack of space on the appellant's driveway and repair tools on the pavement blocking the way for pedestrians. Reference is also made to delivery of vehicle parts early in the morning bringing noise and disturbance. Ledway Drive is a quiet residential street and the access from the appeal property is not particularly wide and is shared with No 2A.
9. The appellant states that he has six adult children and two daughters in law who regularly visit his property. He indicates that the extent of car repairs undertaken was when he tried to replace his car which was on his driveway for 2 years but when he was unable to fix it, he scrapped his car after using some parts for his daughters car. No descriptions are provided of either the appellant's car or his daughter's car or the date as to when his car was scrapped. There is no explanation from the appellant with regard to the use of

low loaders and trucks carrying damaged vehicles to the appeal property, the delivery of a car with no number plates, delivery of parts on a regular basis or the use of the road for car repairs of vehicles in connection with his property. Although the appellant indicates that he is unable to do any heavy work himself in terms of repairs, the Council has not stated who is carrying out car repairs in connection with the property but that repairs have been carried out.

10. The notice also refers to breaking and storage of vehicles, parts, and equipment. The driveway is a generous size and the appellant has referred to having an extensive family. In the event of vehicles being repaired at the appeal property, there would appear to be no reason why those vehicles would need to be stored as well as repaired. There is limited information to show that storage is taking place as well as repairs or any identification of which specific vehicles are being stored rather than parked and if so for what length of time.
11. The photographs provided span a short period of time and cars could be parked and not moved during that period without being stored. Similarly, there is limited evidence of storage of vehicle parts and breaking up of vehicles. There is one photograph of some tyres and a car bonnet but that by itself is not significant. There is limited evidence of any other storage of parts as opposed to delivery of parts used for repair. If there are regular deliveries, that would suggest that parts are ordered and used rather than stored.
12. On the balance of probabilities, I find that the nature and scale of the car repairs does go beyond incidental activity that may be found by carrying out car repairs as part of domestic use of a dwelling. Car repairs have generated disturbance due to the nature of the comings and goings. The presence of overspill repairs on the road has caused disturbance to pedestrians and other road users particularly with vehicles emerging from the access and larger vehicles used for transporting cars having to reverse into the access. Early deliveries of car parts have also caused disturbance for nearby residents.
13. However, applying the same balance of probabilities test, I am not satisfied that the other matters alleged in the notice have taken place. There is no evidence of breaking up cars as opposed to vehicles being brought onto site in a damaged condition. Similarly, there is no information about how car parts are stored on site, or the nature of the other equipment or paraphernalia referred to as part of the requirements or why the Council considers that vehicles are being stored on site. The appeal under ground (b) therefore succeeds to a limited extent.

Other Matters

14. The appellant refers to privacy issues with a neighbour and police involvement but these are not matters that fall within my remit in determining this appeal.

Conclusion

15. For the reasons given and having regard to all other matters, I conclude that the appeal therefore succeeds in part and I will correct the notice prior to upholding it to relate solely to car repairs. Subject to these corrections, the appeal is dismissed and the enforcement notice is upheld.

E. Griffin INSPECTOR