
Appeal Decision

Site visit made on 23 August 2021

by A A Phillips BA(Hons) DipTP MTP MRTPI AssocIHBC

an Inspector appointed by the Secretary of State

Decision date: 28 September 2021

Appeal Ref: APP/W4705/C/21/3272253

28 Haslingden Drive, Bradford, West Yorkshire BD9 5HR

- 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 Atif Javed against an enforcement notice issued by City of Bradford Metropolitan District Council.
- The enforcement notice was issued on 18 February 2021.
- The breach of planning control as alleged in the notice is the material change of use from residential dwellinghouse (C3) to a mixed use of residential dwellinghouse (C3) and storage and distribution of motor vehicle parts (Sui Generis).
- The requirements of the notice are:
 - i. Cease to use the property for the storage and distribution of motor vehicle parts.
 - ii. Permanently remove all items relating to the storage and distribution of motor vehicle parts.
- The period for compliance with the requirements is one month.
- The appeal is proceeding on the grounds set out in section 174(2) (b) and (d) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is allowed and the enforcement notice is quashed.

The enforcement notice

1. Under ground (b) the appellant contends that the enforcement notice is flawed on a number of grounds. However, I find there to be no ambiguity in the description of the alleged breach of planning control which clearly describes the nature of the material change of use which the Council contends has occurred. In addition, it is clear that the alleged breach has occurred within the red edge as shown on the plan attached to the notice. I find no inference that the alleged material change of use has occurred within the dwellinghouse itself.
2. In addition, from reading the notice it is clear that it does not state that storage and distribution is a sui generis use, but rather that the mix of residential use and the storage and distribution of vehicle parts is a mixed use which is sui generis. I do not agree that the red line of the enforcement plan should just encompass the garage but the Council has accurately plotted the red line and clearly stated that within that red line an alleged material change of use of the land has occurred.

The appeal on ground (b)

3. The ground of appeal is that the breach of planning control alleged in the notice has not occurred as a matter of fact. In order to succeed on this ground it would need to be demonstrated that a material change of use from residential to sui generis mixed use residential and storage and distribution of motor parts

has not occurred. Irrespective of the arguments presented by the appellant with respect to running an on line shop from the property and the planning merits associated with the use of the land, the use of the land for residential use and for the storage and distribution of motor vehicle parts has clearly occurred on the land and therefore the appeal on ground (b) must fail.

The appeal on ground (d)

4. The ground of appeal is that at the time when the notice was issued no enforcement action could be taken. In this respect, 10 years continuous use starting from the date of the breach is required, so that material date is 18 February 2011.
5. When dealing with an appeal on ground (d), the burden of proof is on the appellant and the standard of proof is the balance of probabilities. I am aware that, following the judgement of *Gabbittas*¹ the evidence of an appellant should not be rejected simply because it is not corroborated. If there is no evidence to contradict or make the appellant's version of events less than probable and his evidence alone is sufficiently precise and unambiguous, the appeal should be allowed.
6. In support of his appeal the appellant has submitted statutory declarations to which I give significant weight. The first declaration by an individual working within the automotive retail and wholesale sector states that he has regularly supplied the appellant with car accessories to sell on line since 2010, that deliveries to the appeal property took place three or four times a month and this has occurred continuously since February 2010 to date. The second statutory declaration by the occupant of a neighbouring property confirms that the garage at the appeal property has been used for storage and packing purposes since 2009 and trading has occurred from 2010 until the present day. He confirms that he has assisted in packing activities in 2010, 2011 and 2012 and during other periods. Although the details of the business activity are rather sketchy in this declaration, the storage and packing activities described are consistent with the appellant's other evidence.
7. The third declaration by a director of a wholesale supplier of motor and vehicle accessories states that his company has delivered to the appeal property since 2010 and since then there have been regular goods deliveries to the garage. Such deliveries have taken place approximately twice a week continuously since May 2010 to the present day. This is again largely consistent with other evidence with respect to the address in question, the frequency of deliveries and the continuous period during which deliveries of motor and vehicle accessories have taken place.
8. Finally, the appellant's own statutory declaration confirms that has was appointed as Director of a company on 1 April 2014 as confirmed by evidence from Companies House. Previously he was Director of another company which was incorporated on 13 July 2010 and dissolved on 29 November 2016 as also confirmed by Companies House evidence. He confirms that the garage at the appeal site has been used to store and package products for his on line shop since 2009 and the nature of his current company is retail sale via mail order house or via internet. As corroborated by others, the appellant states that

¹ *Gabbittas v SSE & Newham LBC* [1985] JPL 630

suppliers have provided products to his garage at 28 Haslingden Road since 2010 and such activity has continued from 1 February 2010 to present. There is further confirmation that a neighbour assisted with packing goods at the property between 2010 and 2012 as confirmed in that individual's statutory declaration.

9. In support of their case the Council has stated that a planning application (Reference 11/05488/HOU) was submitted in December 2011 for the construction of a side and rear extension which was made on a householder application form which stated that the existing garage was to be removed and a new car port provided at a lower ground level. The application does appear to have been made on the basis that the property was in residential use, but that is not surprising given the indication that the appellant was not aware that his business use alongside the residential use would constitute a material change of use of the land. Also, I can see that the photographs taken by the case officer at the time show no evidence of business use at the appeal site, but again that is not surprising since the business activity appears to have been mainly confined to the garage which is shown to be closed on the photographs.
10. The Council has also referred to Google Maps Streetview imagery, observing that by July 2019 the garage door that existed in August 2008 and October 2014 had changed to a roller shutter, trees and hedges had been cut down and an additional hard surface had been laid. Also, the Council contends that Google Earth Aerial images show that in June 2016 the existing garage with single drive access and hedges and trees remained in place but by April 2018 the hedges and trees had been removed and the additional hard surface laid. The Council goes on to speculate that the material change of use alleged in the enforcement notice is more than likely to have started at the time the alterations were carried out and that is within the ten year immunity period.
11. As previously stated in this decision, the burden of proof is on the appellant and the standard of proof is the balance of probabilities. In my judgement the appellant's evidence demonstrates that on the balance of probabilities the material change of use started before 18 February 2011 and has occurred continuously since before that date. The Council's position seems to me to be speculation relating to alterations that have taken place at the property over the years and the details provided in a planning application submitted in December 2011. The Council's evidence does not contradict that submitted by the appellant nor does it make the appellant's version of events less than probable. The appellant's evidence is convincing and is sufficiently precise and unambiguous. Consequently, the appeal on ground (d) succeeds.

Conclusion

12. For the reasons give above I conclude that the appeal should succeed on ground (d). Accordingly I direct that the enforcement notice shall be quashed.

Formal Decision

13. The appeal is allowed and the enforcement notice is quashed.

A A Phillips

INSPECTOR