

Appeal Decisions

Site visit made on 9 September 2021

by P H Willows BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 October 2021

Appeal Refs: APP/P0240/C/21/3269226 & APP/P0240/C/21/3269227

Land at Wentworth, Dagnall Road, Whipsnade, Dunstable LU6 2LD

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Red Stella Ltd (APP/P0240/C/21/3269226) and Mr Brian Dennis Cantle (APP/P0240/C/21/3269227) against an enforcement notice issued by Central Bedfordshire Council.
 - The enforcement notice, numbered CB/EN/20/0343, is dated 21 January 2020.
 - The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of the building shown edged in blue on the attached plan¹ to use for the repair of motor vehicles and the storage and distribution of motor vehicle parts.
 - The requirements of the notice are:
 - (i) Cease the use of the agricultural building for vehicle repairs and parts distribution;
 - (ii) Remove all vehicles, parts and other commercial paraphernalia from the land.
 - The period for compliance with the requirements is 2 months.
 - The appeals are proceeding on the grounds set out in section 174(2) (b) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice be corrected by changing the date of the notice from 21 January 2020 to 21 January 2021. Subject to this correction the appeals are dismissed and the enforcement notice is upheld.

The enforcement notice

2. The notice is dated 21 January 2020. However, the appeal form indicates that the date of issue was actually 21 January 2021, and this is consistent with the date given for the notice to take effect, which is 22 February 2021. It is evident that it cannot have been issued in 2020, since the report authorising enforcement action is dated 12 January 2021. Overall, there can be little doubt that the notice was actually issued on 21 January 2021. I can correct this error without causing injustice to any party.

The appeals on ground (b)

3. Appeals on ground (b) are made on the basis that the breach of control alleged in the enforcement notice has not occurred as a matter of fact. The onus is on the appellant to make their case and the standard of proof is the balance of probability.

¹ The plan attached to the enforcement notice

4. Part of the building identified in the notice was in use in connection with a car spares business when I visited the site. The building contained shelving which accommodated boxes of car spares and an area was set out as an office. The grounds of appeal indicate that the car spares business has operated at the site since November 2019, and I have no reason to doubt that it has done so.
5. I did not have access to the interior of the remaining, larger part of the building and there was no indication that it was in active use at the time of my visit. There was no indication either of car repairs taking place within the building or elsewhere on the site. However, that does not mean that car repairs were not taking place when the notice was issued. In fact, I have no evidence to show that the allegation in the notice was wrong. The burden of proof in respect of a ground (b) appeal falls on the appellants. Accordingly, the appeals on ground (b) fail.

The appeals on ground (g)

6. The appellants seek to extend the period for compliance in order to allow alternative premises to be found. A six month period is suggested. The appellants point out that the business is already in jeopardy due to the effects of Brexit and Covid-19. It is also argued that the use has very little impact on the locality and that the enforcement action has arisen due to a neighbour dispute rather than any harm arising from the use. I understand that the business employs 2 people and am mindful of the importance of the income it provides to those concerned.
7. However, there is no appeal on ground (a) (that planning permission should be granted) and it is consequently not open to me to consider the planning merits of the alleged uses. The notice seeks to bring an end to the breach of planning control and it is desirable that this is addressed without undue delay. While I appreciate the appellants' desire to relocate the business, I cannot be sure how long this might take. I have noted, however, a suggestion that allowing the business to stay at the site until September 2021 (a date which has now passed) would be beneficial. Taking all of these matters into account, I can see no clear reason to depart from the 2 months specified in the notice. Accordingly, the appeals on ground (g) fail.

Peter Willows

INSPECTOR