



Appeal Decision

Site visit made on 9 July 2021

by Jessica Graham BA(Hons) PgDipL

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 01 November 2021

Appeal Ref: APP/X0360/C/21/3271474

Winnersh Garden Centre, 656 Reading Road, Winnersh, Wokingham RG41 5HG

- 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 GFL Management Ltd against an enforcement notice issued by Wokingham Borough Council.
 - The enforcement notice was issued on 16 February 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of Land as shown in the approximate location on Plan 2 annexed hereto to a car wash and valet service.
 - The requirements of the notice are:
 1. Cease the use of the Land as a car wash and valet service from the approximate location shown on Plan 2
 2. Remove the double canopy, the wash screens, customer waiting and office and restroom cabins, secure storage, fencing, adverts and all associated car wash paraphernalia from the approximate locations shown on Plan 2
 3. Remove all resultant material and debris resulting from steps 1 and 2 from the Land.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a),(c),(d) and (f) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act.

Background

2. Winnersh Garden Centre lies in the countryside between Winnersh and Earley, alongside Reading Road, and close to a major roundabout. The car wash and valet service, with its associated canopy and cabins, is located inside the entrance gates to the Garden Centre, next to the boundary with Reading Road. An Application for retrospective planning permission for the car wash was refused in January 2019¹. It is relevant to note that planning permission² for the extension and reconfiguration of the existing Garden Centre car park was granted by the Council on 15 April 2020 ("the 2020 Permission"). The land that was the subject of that permission did not include the current appeal site.

¹ Ref 153195

² Ref 200560

3. The Council refused a further application for retrospective planning permission³ for the car wash and valet service on 9 February 2021 ("the 2021 Application"), and went on to issue the Enforcement Notice on 16 February. Separate appeals were then made against the Enforcement Notice and the refusal of the 2021 Application, but since the appeal against the refusal of the 2021 Application was not submitted within the specified time limit, it was turned away.
4. It subsequently came to my attention that representations made by the Appellant's agent in respect of the appeal against the enforcement notice included references to documents which may have been submitted with the (contemporaneous, but invalid) appeal against the refusal of the 2021 Application, and were not therefore available to me. In the interests of fairness, I gave the Appellant the opportunity to provide – and the Council and the Environment Agency the opportunity to comment on – such missing documents as were relevant to the current appeal on ground (a). The parties were also given the opportunity to comment on the implications, for their respective cases, of the revised version of the National Planning Policy Framework (NPPF) published by the government on 20 July 2021. I have taken all of the responses into account in my determination of the appeal.

The appeal on ground (c)

5. The ground of appeal is that the matters alleged by the notice do not constitute a breach of planning control. The Appellant contends that the car wash use is ancillary to the principal garden centre use, such that no material change of use has taken place, and no planning permission is required.
6. The Appellant also contends that the wash screens and fencing do not need planning permission, since they are Permitted Development,⁴ and that the container and cabin have been on the garden centre site for more than ten years. However, it is important to be clear that the alleged change of use needs to be considered in its entirety, and cannot be disaggregated into separate components. The wash screens and fencing, together with other operational development such as the canopy and cabins, are part and parcel of the car wash and valeting service and have helped to facilitate that use. They will therefore not be lawful if the use itself is not lawful, irrespective of the provisions of the GPDO, or the fact that cabin and container may have been located elsewhere within the garden centre for more than ten years.
7. It is common ground that the planning unit here under consideration is the Garden Centre site in its entirety⁵, and that its primary use is for A1 retail. The type and scale of activity which may ordinarily be regarded as ancillary to a particular primary use will be a matter of fact and degree, with a key consideration being the existence of a functional link between the two. Similarly, the concept of "material change of use" is not defined in statute or statutory instrument: it is a question of fact and degree in each case. If an ancillary use alters or expands to a point where it is no longer subsidiary to the primary use of the planning unit, or where it brings about a significant difference in the character of the lawful use, then this is likely to amount to a material change of use.

³ Ref 202668

⁴ By virtue of Class A of Part 2 of Schedule 2 to the *Town and Country Planning (General Permitted Development)(England) Order 2015* (as amended) "the GPDO".

⁵ As shown edged in red on "Plan 1" attached to the Enforcement Notice

8. I saw at my site visit that the car wash and valeting service occupies a discrete self-contained area just inside the entrance. It is equipped with jet-washers, and a large canopy housing mechanical drying apparatus, and appears to be a professional and well-run operation. Various signs, including an individual entry on the main garden centre signboard on the Reading Road, advertise the presence of the "FS partnership" car wash and valeting centre, and the staff wear "FS" branded uniforms. There are dedicated parking bays, distinct from the main garden centre car park, where customers may leave their vehicles. There are equipment stores, a small kiosk used for taking payment, and a larger timber shed, which provides an indoor customer waiting area.
9. British Garden Centres (South) Ltd, the owners of the site, have explained⁶ that while garden centres remain primarily destinations for garden and garden-related goods and services, for viability and seasonal reasons they also provide additional complementary product ranges and services. These ancillary goods and services are influenced by changing market trends and so are constantly evolving; a car wash facility is now available at many modern garden centres across the country.
10. I appreciate that the car wash in this case may well provide a useful complementary service for visitors to the garden centre, in that they can pay to have their car cleaned while they shop, and collect it when they are ready to leave. However, that service is not in any way limited to customers of the garden centre. Access to the car wash facility is via the entrance gates to the garden centre, so their opening hours necessarily coincide, but during those opening hours the car wash is available for use by anyone, whether or not they are also visiting the garden centre.
11. The Appellant has drawn my attention to a number of previous appeal decisions.⁷ As these decisions demonstrate, there will be circumstances in which a car wash use is, as a matter of fact and degree, ancillary to a primary A1 retail use at a garden centre; for example, where the car washing takes place within a section of the existing garden centre car park that is not physically separate from the rest of the parking, and the only operational development is a small storage shed. But as noted above, it is important that each case is assessed on the basis of its own specific circumstances.
12. Here, the car wash and valet service is provided within a well-defined and clearly demarcated area that is separate from the car park provided for garden centre customers. Various structures have been erected, and professional equipment installed, within this area specifically to facilitate the use. The car wash and valet facility has its own distinct identity, branding and signage. It does not simply provide an additional service to garden centre customers while they shop, but is open to the public at large.
13. In my judgment, the car wash here at issue is physically and functionally distinct from the primary A1 use of the garden centre. Access to both is controlled by the same entrance gates, but beyond that there is nothing that would suggest the car wash use in its present form is either part and parcel of, or subsidiary to, the retail use. The movement of vehicles visiting specifically to be cleaned, and the use of specialised equipment such as the jet washers and

⁶ By letter dated 19 March 2021

⁷ APP/T0355/C/10/2126788; APP/J3720/W/15/3010450; APP/X0360/A/12/2181714

mechanical dryers, have changed the character of the use of this part of the garden centre site.

14. I conclude that whether the installation of the car wash and valet service in this self-contained area has resulted in the addition of a new primary use to the existing planning unit, or the creation of a new planning unit in a single primary use, there has as a matter of fact and degree been a material change in the use of the land, which requires planning permission. No planning permission has been granted, and so a breach of planning control has occurred. The appeal on ground (c) therefore fails.

The appeal on ground (d)

15. The ground of appeal is that at the date when the enforcement notice was issued, the time for taking enforcement action against the alleged breach of planning control had expired. Where (as here) the alleged breach concerns a material change of use other than the use of any building as a single dwellinghouse, the time for taking enforcement action expires after the end of the period of ten years beginning with the date of the breach.
16. The notice was issued on 16 February 2021, so to succeed on this ground, the Appellant would need to demonstrate that the material change of use had taken place before 16 February 2011. The burden of proof lies with the Appellant, and the standard of proof is the balance of probability. The Appellant's evidence does not need to be corroborated by independent evidence in order to be accepted, provided it is sufficiently precise and unambiguous, and there is no other evidence to contradict it or otherwise make the Appellant's version of events less than probable.
17. The Appellant's case is that this is not a new use, but rather a replacement of the car wash that had previously operated from an adjacent site within the garden centre, incorporating the canopy to the north of the building closest to the entrance gates, which is still there today. In support of this contention the Appellant has provided a series of Google earth aerial images, dating from 2003, 2008 and 2014, in which that canopy is clearly visible. However, there is nothing else visible in these photographs to indicate that any car wash use was taking place, either beneath or adjacent to the canopy.
18. The only other supporting evidence provided by the Appellant is a series of extracts from emails stated to be from David Lazenby, Property and Concessions Director of BGC South Ltd (the owners of the site); David Templeman, previously the Wyevale Property Manager, now a Commercial Consultant; and Robert Shala of FSP Car Washes. Copies of the emails, or questions, to which they are responding have not been provided.
19. Mr Lazenby states that he has spoken to colleagues, who believed that a car wash had been on site from "potentially 2008...it was a significantly more basic operation (sponge and bucket type of thing)." Mr Templeman sets out his understanding that "a Hand Car wash had been established prior to 2010" at the garden centre... In 2015 we entered into a lease under the ownership of FS Car Wash."
20. Mr Shala states "I can confirm that car wash was there until the very day we started with installation of our car wash, washing cars by the IT building under the canopy and drying the same cars on the opposite side (car parking bays)."

He refers to two photographs "highlighting where the previous car wash unit was with the canopy present" and goes on to say "Nothing has ever changed in terms of car wash (containers, machines, layout, colour, advertising etc). It is absolutely identical to what it was when first photos taken. Photos I have send to you yesterday are the ones that have been taken at the very beginning of the car wash becoming operational." The photographs to which Mr Shala refers are not clearly identified in the Appellant's evidence, but it seems probable that they are the two photographs entitled "Street Photos of both Car Washes 2015" included in Appendix 1 to the Appellants "Supplementary Statement – Clarification of Details".

21. The Council's case is that while there may previously have been some informal car washing arrangement in the garden centre car park, the greater intensity of the current use, along with its associated development, has only been in operation since 2015. It has provided a series of Google Street View images, dating from 2008, 2009 and 2012. As with the aerial images provided by the Appellant, the canopy is clearly visible, but there is nothing else in the photographs (such as any signage, or washing equipment etc) to indicate that any car wash use was taking place. Moreover, in the images dated March 2009, June 2009, May 2012 and September 2012, a variety of items such as large compost sacks are clearly stacked below and in front of the canopy.
22. The Council has also drawn my attention to an application for planning permission, submitted in 2012,⁸ for "proposed change of use of building to garden centre restaurant to include construction of a terrace, access ramps, cold store within existing canopy and external fire escape." The canopy referenced in that application is where the Appellant contends the previous car wash was located. The application was refused by the Council, but subsequently allowed at appeal.⁹ Neither the Officer's Report nor the Inspector's Decision Letter make any reference to a car wash operating at the site. A photograph, taken by a Council Officer in the course of a site visit in 2012, shows a range of items including netted logs and kindling stored beneath the canopy.
23. The Council has provided a copy of the Garden Centre's website, dated May 2012, which lists the facilities available but makes no reference to a car wash service. It has also provided a series of photographs, taken by its Enforcement Officer in October 2015, which show the current car wash facility largely completed, but fenced off. A sign on the fence reads "Coming soon: FS Partnership is proud to bring you this new car valeting facility."
24. Drawing all of this together, I find nothing to support the Appellants claim that "A car wash has been continuously on site since pre circa 2003". The earliest date that appears in the evidence is Mr Lazenby's reference to "potentially 2008", in respect of an operation which he characterises as a basic "sponge and bucket" operation.
25. I have no reason to doubt Mr Shala's confirmation that a car wash service, which incorporated the use of the canopy adjacent to the building, was in existence prior to the 2015 commencement date of his car wash service. But the crucial point is that there is simply no evidence as to the start date of a previous operation in that location. No car washing activity is visible in any of

⁸ Ref F/2012/0723

⁹ Ref APP/X0360/A/12/2181714

the aerial imagery, and the street view photographs taken on four different dates in 2009 and 2012 show the canopy in use for storage, which would preclude its use for car washing, with no indication of washing taking place nearby. The Appellant contends that it was a coincidence that car washing activity was not taking place in the vicinity of the canopy when the photographs were taken, and suggests that it could have been taking place elsewhere on site as a “bucket and sponge” operation.

26. In summary, the evidence presented to me indicates that while there may well have been a car wash service on site from 2008 onwards, this was a low-level “bucket and sponge” operation which appears not to have been located in any one specific part of the garden centre site. This suggests it is likely to have been ancillary to the primary retail use. While the original low-level car wash service may have increased in intensity to something approaching the current facility, there is no evidence at all to suggest that it had reached that stage prior to September 2012: photographs from that date show the canopy adjoining the building near the entrance, where the use is alleged to have taken place latterly, in use as a storage area instead.
27. I conclude that the Appellant has not discharged the evidential burden of demonstrating that on the balance of probabilities, the material change of use took place prior to relevant date of 16 February 2011. The appeal on ground (d) therefore fails.

The appeal on ground (a)

28. The ground of appeal is that planning permission should be granted for the matters stated in the notice. The Council considers that (subject to appropriate conditions) the car wash and valet service would be acceptable in terms of its impact on the character and appearance of the area, living conditions at nearby residences, and highway safety. I agree with that assessment. The disagreement between the parties, and the main issue for this appeal, is whether the proposal would comply with national and local planning policy concerning development in areas at risk of flooding.
29. The land on which the car wash and valet service is sited lies within Flood Zone 3b: that is, it is on land which has the highest probability of flooding, and is in fact identified as “functional floodplain”. Table 1 of the Planning Practice Guidance on Flood Risk and Coastal Change (PPG) defines this as land where water has to flow or be stored in times of flood. Annex 3 of the NPPF identifies development types according to their vulnerability to flooding. While car washes are not specifically mentioned in any of the five categories, I share the Environment Agency’s view that this type of use is more closely aligned with the “Less Vulnerable” category (which includes buildings used for professional and other services; car parks; and general industry, storage and distribution) rather than the “Water-compatible development” category (which is largely restricted to development that cannot reasonably be located elsewhere, such as gravel extraction or watersports).
30. Table 3 of the PPG indicates that “Less Vulnerable” development in Flood Zone 3b does not fall within the category of development that may be regarded as “appropriate”: rather, it is development that should not be permitted. This aligns with national flooding policy set out at paragraph 159 of the NPPF, which states that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk. Paragraph

- 167 of the NPPF goes on to advise that when determining planning applications, the decision maker should ensure that flood risk is not increased elsewhere.
31. The Appellant contends that when the car wash site is considered in conjunction with the 2020 Permission for the extension and reconfiguration of the Garden Centre car park, there would be no increased risk of flooding elsewhere because, as is claimed in the "Flood Risk & Drainage: Proposed Car Wash & Valet" report submitted in support of the 2021 Application, floodplain volumes are actually increased.
32. The Environment Agency, as a consultee for the 2021 Application, considered that report and concluded that it did not provide sufficient detail of the floodplain compensation strategy. It objected to the 2021 Application on the grounds that the report did not adequately demonstrate whether there would be a loss of flood storage as a result of the proposed development. In the context of the current appeal the Environment Agency has again reviewed the report, and has set out its concerns that the methodology for calculating floodplain volumes, and the calculations themselves, are not adequately explained and are difficult to interpret. I share that view.
33. In the absence of clear and convincing evidence that adequate compensatory flood plain storage exists to offset that lost through the installation of the car wash and valet site, I cannot be satisfied that flood risk is not increased elsewhere.
34. The Appellant has pointed out that the structures on the appeal site are resilient; that it is highly unlikely that anyone would wish to use a car wash facility in times of poor weather and heavy rainfall; there is a safe route to evacuate the appeal site; and that in any event, in times of flood the Garden Centre, and consequently the whole site including the car wash, would be closed. I also appreciate that the nature of this business operation is such that it could resume within hours of flood waters receding, given that it has its own washing equipment and personnel available to clean down the site. However, none of these considerations are sufficient to overcome the fact that this is development of a type which should not be permitted in a functional flood plain, and the lack of sufficient evidence to demonstrate that flood risk would not be increased elsewhere.
35. The Appellant drew my attention to perceived inconsistencies between the approach of the Council and the Environment Agency in granting permission for the extension and reconfiguration of the Garden Centre car park, but refusing it for the car wash. However, the two forms of development have important differences. The alterations to the existing car park did not involve any raising of existing ground level, or any new buildings or structures, and the Environment Agency made no objection subject to a condition that there be no reduction in flood plain volume. In contrast, the installation of the car wash and valet service introduced a new use, and new structures, which would result in a reduction in available flood storage. In the absence of sufficient evidence to demonstrate that the loss of flood storage could be adequately compensated, the Environment Agency objected. I see no inconsistency in this approach.
36. In conclusion, I find that the development conflicts with the aims of Policy CP1 of the Wokingham borough Core Strategy and Policy CC09 of the Wokingham Borough Managing Development Delivery Document, which together seek to

ensure that inappropriate development in areas at risk of flooding is avoided, and that existing flood risk is not worsened. It is also at odds with the national planning guidance contained in the NPPF and the PPG. I therefore consider that planning permission for the development should not be granted, and the appeal on ground (a) must fail.

The appeal on ground (f)

37. The ground of appeal is that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by the breach.
38. The Appellant's case on this ground is that the car wash use can be "disaggregated" into "several functions" that either do not need planning permission or are permitted development. However, no further information is provided as to what these divisible functions might be. If the Appellant meant to refer in this context to individual structural components of the facility (such as the canopy, fences and screens) it remains the case, as set out in paragraph 6 above, that such components cannot be "disaggregated". They are part and parcel of the unauthorised car wash and valeting service, and have helped to facilitate that use, so the enforcement notice can require their removal.
39. The Council has confirmed that the purpose of the notice in this case is to remedy the breach of planning control. The Appellant has not suggested any lesser steps than those set out in the notice which would achieve the same end, and I am satisfied that the requirements to cease the unauthorised use and remove the equipment and materials which facilitated it do not exceed what is necessary to remedy the breach. The appeal on ground (f) therefore fails.

Conclusion

40. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act.

Jessica Graham

INSPECTOR