The Planning Inspectorate

Appeal Decision

Site visit made on 13 July 2021

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08/11/2021

Appeal Ref: APP/T0355/C/20/3262239
Land at Citi Autos, Queen Acre Cottage, Windsor Road, Water Oakley, Windsor.

- 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 Wayne Owen against an enforcement notice issued by the Council of the Royal Borough of Windsor and Maidenhead.
- The enforcement notice, numbered 16/50329/ENF, was issued on 30 September 2020.
- The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of the land from a mixed use comprising dwellinghouse and agricultural land (sue generis), to a mixed use comprising dwellinghouse and the sale and display for sale of motor vehicles (sue generis); which incorporates the formation of hardstanding, to facilitate the use of the sale and display for sale of motor vehicles, and the material change of use of an existing outbuilding from incidental residential use to an office use. And. Without planning permission, the erection of an outbuilding.
- The requirements of the notice are:
  i. Cease the use of the land for the sale and display for sale of motor vehicles.
  ii. Remove from the land all vehicles that are either displayed for sale or are parked in connection with the vehicle sales and are awaiting to be displayed.
  iii. Cease the use of the outbuilding highlighted in green on the attached plan as an office used in connection with the sale and display for sale of motor vehicles.
  iv. Remove all office paraphernalia from the building used in connection with the sale of vehicles, including but not limited to desks;
  v. Dig up and remove from the land all hardstanding hatched in black on the attached plan.
  vi. Demolish or dismantle the outbuilding highlighted in blue on the attached plan
- The period for compliance with the requirements is three calendar months after the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary Decisions: The appeal succeeds in part, but is otherwise dismissed and the enforcement notice is upheld with a correction and variations in the terms set out below in the Formal Decisions.

The Notice

1. The Notice refers to two outbuildings. The first is that referred to in the first part of the allegation and its location is accurately identified in part 4 iii. of the notice, highlighted green on the enforcement notice plan. The second part of the allegation is the erection of an outbuilding. Requirement vi. in part 4 of the notice requires the removal of the outbuilding, giving its location as highlighted in blue on the plan. Whilst at the site visit I noted that there were two outbuildings on site (including that highlighted green on the plan), I did not see an outbuilding in the location identified in blue. Instead, there was a small timber outbuilding some 2 or 3 metres to the west of the blue highlighted area.

2. Notwithstanding the above, it has not been suggested that an outbuilding was not in the location highlighted blue when the notice was issued. Neither has the appellant made an appeal under ground (b) or made the case that the breach of control alleged has not occurred. Instead, he has made the case that the outbuilding is permitted development and that, for this reason, there has not been a breach of planning control.

3. Having regard to all of the above, I am satisfied that the second part of the allegation targets the smaller timber outbuilding I observed on site and that the appellant was reasonably certain of this when making his appeal. I do not, therefore, find the notice to be invalid for this reason. I will, however, vary requirement 4 vi. of the notice to remove reference to the blue highlighted area so as to remove any uncertainty.

4. Turning to the allegation of a material change of use, the description of the mixed use states that it comprises a dwellinghouse, as well as the sale and display for sale of motor vehicles. However, the mixed use is alleged to have occurred on land and not just within a building. In addition to the dwellinghouse, I noted a residential use of the land on site, alongside the motor car sales use. The use of land as garden is also referred to in the completed planning contravention notice. I do not, therefore, find the inclusion of a use as a dwellinghouse as part of the mixed use to be an accurate description in this case. A mixed use including a residential use would be far more accurate and correcting the notice as such would not in my judgement cause injustice to any party.

Ground (c)

5. To succeed on ground (c), the appellant must demonstrate that, on the balance of probability, the matters alleged in the notice do not constitute a breach of planning control. The burden of proof is on the appellant. The appellant's evidence as it relates to this ground of appeal refers to the small timber outbuilding, which he describes as a shed, and to the existing outbuilding, identified in green on the plan.

6. The appellant does not dispute that the desks within the existing outbuilding, along with other office paraphernalia as described in the notice, facilitate the mixed use alleged in this case. His case is that these items could also be used in connection with the lawful use of the building as an ancillary residential outbuilding. Whilst this may well be the case, this does not assist him in demonstrating that, on the balance of probability, the alleged mixed use of the site does not constitute a breach of planning control.

7. As for the shed, as noted above, the appellant suggests that this outbuilding is permitted development. Although he does not refer to The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the Order), the Council have referred to Class E, Article 3, Schedule 2 of the Order which permits the provision of a building within the curtilage of a dwellinghouse. The Council point to Article 3(5) of the Order, which advises that the permission granted by Schedule 2 does not apply if, in the case of permission granted in connection with an existing use, that use is unlawful.

8. The permission granted by Class E is for, amongst other operations, buildings incidental to the enjoyment of a dwellinghouse. For the development to benefit from the permission granted by Class E it must, amongst other matters, be

within the curtilage of the dwellinghouse and required for a purpose incidental to the enjoyment of the dwellinghouse. The appellant has not, however, demonstrated that these two requirements are met. Indeed, the Council allege that there is a mixed use of the site and that this use is unlawful; that is not disputed by the appellant. Accordingly, I cannot be satisfied that on the balance of probability the development is permitted by Class E or that the provisions of Article 3(5) of the Order are not engaged.

9. I note the appellant's reference to a certificate of lawfulness[1], which he says was granted for the outbuilding. However, I have not been provided with any documents relating to that application; nor have I been advised of the circumstances that were considered in that case. I do not, therefore, have any reason to alter my conclusion above.

10. I have not been made aware of any reason why the outbuilding would not require the benefit of express planning permission, in accordance with section 57 of the 1990 Act, and it has not been suggested that the necessary planning permission has otherwise been granted. Accordingly, and on the balance of probability, the outbuilding alleged in the enforcement notice to have been erected constitutes a breach of planning control. For this reason the ground (c) appeal must fail.

Ground (d)

11. An appeal on this ground is that, at the date on which the notice was issued, no enforcement action could be taken in respect of any breach of planning control that may be constituted by those matters. The test in this regard is the balance of probability and the burden of proof is on the appellant.

12. In his evidence the appellant acknowledges that the material change of use alleged in the notice has occurred, but does not make the case that the use is lawful. Instead, his case is aimed at the hardstanding referred to in the allegation. He states that 'some of this has been in existence for more than 4 years and in place before the material change of use commenced'. The appellant's case is that for this reason the hardstanding is lawful. However, additional evidence (he refers to photographic evidence) that he says he will rely on to support his case has not been provided by him. His statement alone, provided in his appeal form, is ambiguous and not sufficiently precise with regard to this matter.

13. In view of this, the appellant has failed to demonstrate, on the balance of probability, that the works to lay the hardstanding (or certain areas of hardstanding) were substantially completed when he suggests they were, or that the works to lay the hardstanding (or parts thereof) are not part and parcel of the mixed use alleged. These are relevant matters in the consideration of the appellant's ground (d) appeal.

14. Notwithstanding the above, the Council have acknowledged that some hard surfacing existed prior to the material change of use having occurred, and say that it has excluded these areas from the requirement to dig up and remove the hardstanding. In this regard the Council has referred to hard surfacing

[1] Council reference 15/00811/CLU.

visible in the 2014 aerial photograph[2]. The areas visible broadly accord with the area excluded from the black hatched area on the enforcement notice plan.

15. Fundamentally, the relevant period for the material change of use alleged in the notice is 10 years, and not 4. I have not been provided with any evidence that leads me to conclude that, on the balance of probability, enforcement action could not be taken in respect of this breach of planning control. As such, and having regard to all of the above, the appellant has not discharged the burden of proof in this case. For this reason the ground (d) appeal should fail.

Ground (f)

16. For the appeal to succeed on this ground, I must be satisfied that the steps required to comply with the notice are excessive and lesser steps could overcome the breach of planning control or, as the case may be, the injury to amenity. Having regard to the requirements of the notice, the purpose of it must be to remedy the breach of planning control that has occurred.

17. I note that under the appellant's ground (f) appeal he has referred again to a lawful development certificate and suggests that the outbuilding is permitted development. His case as put falls squarely to be considered under the ground (c) appeal, as I have done above. I acknowledge that in other circumstances the outbuilding might well be permitted development and, therefore, a requirement to remove it would not achieve any useful purpose. However, I have been given no reason to conclude that, once the notice is complied with, an outbuilding similar to that in this case would benefit from the permission granted by the Order.

18. Notwithstanding the above, settled case law has established that an enforcement notice in relation to a material change of use can require the removal of operational works that are part and parcel of the use enforced against. This includes operational works that do not constitute development for the purposes of section 55 of the 1990 Act; are permitted by the Order; or are otherwise lawful in planning terms through the passage of time.

19. Having regard to my conclusions above, I do not find the requirement to demolish or dismantle the outbuilding to be excessive.

20. The appellant's remaining case under ground (f) is the same as was made under his ground (c) appeal, that the 'desks should be allowed to stay in the ancillary residential outbuilding'. In this regard I note the provisions of section 57(4) of the 1990 Act, which states that 'where an enforcement notice has been issued in respect of any development of land, planning permission is not required for its use for the purpose for which (in accordance with the provisions of this Part of this Act) it could lawfully have been used if that development had not been carried out'. An enforcement notice should not interfere with these rights.

21. The relevant requirement to the appellant's case in this regard is to 'remove all office paraphernalia from the building used in connection with the sale of vehicles, including but not limited to desks' (requirement 4 iv.). The desks in question are within an existing outbuilding. There is no dispute between the

[2] Figure 6 of the Council's appeal statement.

parties that the outbuilding was not on site before the mixed use commenced. Furthermore, the Council does not dispute the appellant's suggestion that the lawful use of the building is as an ancillary residential outbuilding. As a consequence, prior to the material change of use having occurred, the outbuilding could have lawfully been used in association with the dwellinghouse as a study or as a home office where office type furniture might be used.

22. Whilst there may be no dispute that office furniture currently facilitates the unauthorised use in this case, the lawful use of the outbuilding could also be facilitated by this furniture. The notice would prevent such furniture being in this building, which might interfere with the appellant's ability to use the building for its lawful use. Accordingly, I conclude that a requirement to remove 'all office paraphernalia', including the desks, is excessive. The remaining requirements are sufficient to overcome the breach of planning control in this case.

23. For the reasons set out above, I conclude that the ground (f) appeal should succeed insofar as it relates to requirement 4 iv, and that it should otherwise fail. I will, therefore, quash the notice insofar as it relates to the requirement 4 iv. and delete this requirement from the notice.

Ground (g)

24. An appeal on ground (g) is that the period specified in the notice falls short of what should reasonably be allowed. The notice specifies a period of three calendar months from when the notice takes effect.

25. The appellant suggests that a longer period is required as the company have experienced financial hardship and have been unable to find alternative premises that they can afford. Whilst I note the appellant's case in this regard, he has not provided any information about his search for alternative premises, including the geographical area searched, the premises that he has considered or his budget for an alternative site. Without such evidence I am not able to conclude that the three month period falls short of what should reasonably be allowed.

26. I acknowledge the appellant's representations with regard to the context of the appeal site. However, the effect of the breach of planning control in this case on the surrounding area is not relevant to the matter of whether or not the period for compliance with the notice is reasonable. Furthermore, as there is no ground (a) appeal, I am unable to consider the planning merits of the development in this case.

27. Having regard to the above, I have no reason to conclude that the period specified in the notice falls short of what should reasonably be allowed. For this reason, the ground (g) appeal should fail.

Overall Conclusions

28. For the reasons given above, I conclude that one of the requirements of the notice is excessive to remedy the breach of planning control. I shall, therefore, vary the enforcement notice prior to upholding it. The appeal on ground (f) succeeds to that extent. Otherwise, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and variations.

Formal Decision

29. It is directed that the enforcement notice is corrected by the deletion in part 3 of the words 'dwellinghouse and' after the words 'to a mixed use comprising' and their replacement with the words 'a residential use and a use for'.

30. It is directed that the enforcement notice is varied by:

- The deletion in part 5 of paragraph iv. in its entirety; and
- The deletion in part 5 of the words 'highlighted in blue on the attached plan' from paragraph vi.

31. Subject to the correction and variations, the appeal is dismissed and the enforcement notice is upheld.

J Moss

INSPECTOR