
Appeal Decision

Site visit made on 1 September 2021

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

an Inspector appointed by the Secretary of State

Decision date: 17th November 2021

Appeal Ref: APP/W3005/C/21/3273304

Land at 17 Clumber Street, Sutton-in-Ashfield NG17 1FU

- 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 Rob Gordon against an enforcement notice issued by Ashfield District Council.
- The enforcement notice was issued on 18 March 2021.
- The breach of planning control as alleged in the notice is:
Without the benefit of planning permission, the material change of use of the land from residential to a mixed use comprising residential and the sale, storage and valeting of vehicles. The approximate location of the change of use is edged in blue with blue hatching on a second attached plan referenced - ADC 2.
- The requirements of the notice are:
 1. To cease the unauthorised change of use of vehicle sales, storage and valeting on the land.
 2. To remove:
 - 2.1 all vehicles from the land which are offered for sale; and
 - 2.2 all vehicles stored on the land which are not incidental or ancillary to the domestic use of the dwelling on the land.
- The period for compliance with the requirements is 2 months after the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2) (b), (c) and (f) of the Town and Country Planning Act 1990 as amended (the 1990 Act).

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

Procedural Matters

1. The appellant has questioned the expediency of the Council's decision to take enforcement action taking into account its adopted Ashfield Planning Compliance and Enforcement Plan July 2020. He has also raised issues relating to the conduct of the Council and its officers during the enforcement proceedings. A good deal of the appellant's submissions are directed at the manner in which the Council have dealt with him. These matters lie outside the ambit of the appeal before me therefore they are not for consideration through it.
2. I note that the evidence before me refers to the planning merits of the development. Nevertheless, these factors are not relevant to the determination of this appeal as an appeal on ground (a) has not been made. My decision rests on the facts of the case, on relevant planning law and judicial authority. The test of evidence is made on the balance of probability.

The Notice

3. On an appeal any defect, error, or misdescription in an enforcement notice may be corrected using the powers available in section 176(1)(a) of the 1990 Act, or the terms may be varied, where the correction or variation will not cause injustice to the appellant or local planning authority.
4. Section 55 of the 1990 Act states, amongst other things, that “development,” means the making of any material change in the use of any buildings or other land. The alleged breach of planning control is described as *'without the benefit of planning permission, the material change of use of the land from residential to a mixed use comprising residential and the sale, storage and valeting of vehicles. The approximate location of the change of use is edged in blue with blue hatching on a second attached plan referenced- ADC 2.'*
5. Whether an activity or business amounts to a material change of use is a matter of fact and degree, amongst the considerations being whether there is a change in the character of the use of the land and whether there are off-site impacts. In addition, ancillary or incidental uses have been held to be those that are ordinarily associated with the primary use of the property.
6. In order to assess the materiality of any change of use, it is necessary to establish the appropriate planning unit. The planning unit is usually the unit of occupation. As such in this case, in my judgment, the planning unit would encompass the land shown edged red on the plan¹ (herein cited as the land) attached to the enforcement notice. There are no arguments within the appeal parties' evidence to contradict my assessment.
7. A mixed use is taken to occur where the planning unit is put to 2 or more activities and it is not possible to say that one is incidental to another. Therefore, the alleged material change of use to a mixed use relates to the whole of the land shown edged red cited above. As a result the sentence *'The approximate location of the change of use is edged in blue with blue hatching on a second attached plan referenced- ADC 2'* cannot be correct as it excludes the dwelling. Both parties have been given the chance to comment on this matter. The Council have stated that, in its opinion, no injustice would be caused to the parties. I agree with that response consequently, I intend to delete this sentence from the description of the alleged breach and the cited plan from the enforcement notice.

The ground (b) appeal

8. The issue under ground (b) is whether or not the breach of planning control alleged in the enforcement notice has occurred as a matter of fact. In this ground of appeal the onus of proof is firmly on the appellant to show that some or all of the alleged matters had not in fact occurred by the time the notice was issued, on the balance of probabilities.
9. The appeal site is occupied by a detached dwelling with a hardstanding to the front. The site is accessed from a private drive that runs off the end of Clumber Street. A number of properties appear to be served from the private drive and the southern boundary of the site is formed by a wall along Willowbridge Lane.

¹ Ref: ADC-1

10. The appellant states that he runs a car sales business and the property had been used temporarily for vehicle sales whilst he secured a forecourt. However, he contends that no storage activity related to car sales nor valeting have occurred at the property. He goes on to state that the vehicles on the drive were for sale and not storage and that he washes and vacuums his own cars and that other members of his immediate family do the same to their cars. It is stated that the family are car enthusiasts and own 10 vehicles between them. He also maintains that the cars for sale were valeted at the Shiny Hand Car Wash on Alfreton Road.
11. The Council's delegated report states that the occupier of 17 Clumber Street is using the land around his dwelling as a car sales lot, advertising cars for sale via the internet and inviting customers to view and test drive the cars at the site. It goes on to state that he is also valeting the cars in preparation for their sale and that the cars are parked on the drive and grassed areas of the property.
12. There is no dispute that the use of the land for vehicle sales appears to have recently ceased. However, in a ground (b) appeal the issue is whether the alleged breach had occurred by the date the enforcement notice was issued. The appellant himself has stated that vehicle sales had taken place at the property prior to the enforcement notice being issued. Whether or not these were temporary and have now ceased is of no consequence to ground (b); the vehicle sales use has occurred as a matter of fact.
13. The alleged breach of planning control describes the sale, storage and valeting of vehicles as primary uses. However, it is clear from the Council's delegated report that the valeting and storage of vehicles that they are targeting within the enforcement notice are associated with the vehicles for sale and not separate primary uses in their own right. The evidence before me also supports a view that those uses are associated with the sale of vehicles use, if they occurred and so are not primary uses.
14. The Council have stated that it was aware that the appellant washed and cleaned the vehicles inside and out. This appears to be the basis of what constituted 'valeting' of vehicles in its opinion. The appellant has stated that the family's own vehicles are cleaned and hovered at the land but that the vehicles for sale are valeted at a specific business elsewhere. In this regard the appellant's evidence is precise and unambiguous and I have no specific evidence from the Council or any other party to dispute this. As such, the allegation of valeting of the vehicles that are associated with the vehicle sales in the breach of planning control is not substantiated and for that reason the appeal succeeds on ground (b) to this extent. In any event, any valeting would be a use incidental to the vehicle sales use.
15. In this case, vehicles for sale were located for a period of time on the land as vehicles would be on a forecourt at a vehicle sales garage. The vehicles for sale can reasonably be treated as being stored on the land as they are not needed to be used for transport purposes until they are sold. The evidence before me indicates that vehicles for sale were only stored on the land whilst they were in the process of being sold prior to the enforcement notice being issued. This is an activity incidental to the primary use of vehicle sales for that reason the appeal succeeds on ground (b) to this extent.

16. I shall correct the notice to omit reference to valeting and storage given that the appeal on ground (b) has succeeded to those extents. Consequently, I intend to delete the wording '*the sale, storage and valeting of vehicles*' within the description of the alleged breach and replace it with '*the sale of vehicles*'. To ensure that the wording of the requirements correlate to the corrected description I intend to delete the wording '*To cease the unauthorised change of use of vehicle sales, storage and valeting on the land*' that forms requirement 1 and replace it with '*Cease the use of the land for the sale of vehicles*'. I consider that I can carry out these corrections without injustice to either main party.

The ground (c) appeal

17. This ground of appeal is that those matters, if they occurred, do not constitute a breach of planning control. In an appeal on this ground the appellant has to demonstrate on the balance of probability that the matters alleged, to have occurred, in the notice (as corrected) do not constitute a breach of planning control.
18. The Council's evidence indicates that the appellant advertises vehicles for sale on a website 'welovemotors.co.uk' and that photographs on that website illustrated vehicles at the appeal property. It also indicates that the number of vehicles advertised for sale varied but amounted to a least 10 being for sale on the website. I have not been provided with any screenshots of the website showing the vehicles for sale or the cited photographs. Neither have I been provided with photographs of the vehicles on the appeal site. Although the Council says that the enforcement investigation was initiated following the receipt of regular complaints, no representations or evidence from neighbours or other third parties about the use has been submitted by the Council.
19. The appellant considers that you only need planning permission for change of use if the majority of space is no longer used for residential purposes and if most of the available space is to be permanently used to support activity other than the intended domestic use. He goes on to state that this is not and never has been the case as the area temporarily used for vehicles for sale is less than a third of the available space and the use was only temporary whilst a forecourt was obtained. Once there is a business operating from a dwellinghouse, even if it is not full-time, or it is not intended to be undertaken on a permanent basis a material change of use may result. Activities such as the keeping of dogs in large numbers, even as a hobby, will amount to a material change of use if they are outside what could normally be expected to occur at a dwellinghouse and its curtilage. Consequently, whether a business or activity amounts to a material change of use is a matter of fact and degree, amongst the considerations being whether there is a change in the character of the use of the land and whether there are off-site impacts. This is irrespective of the amount of space used.
20. Mr Gordon has indicated that at the time the Council visited the site that a number of vehicles were present on the site but not all of them were advertised for sale as a number of them belonged to the residents of the property. He continues that 2 of the 10 vehicles advertised for sale were his personal vehicles, which did not belong to the business and that he did not have 20 vehicles for sale, so he did not need to fit 20 vehicles in the area identified for vehicles for sale. He also maintains that the 20 vehicles included his and his

immediate family's vehicles, vehicles for sale and visitors. He also states that *'There is parking for 20 cars on my drive, we own 10'... 'we are car enthusiast'*.

21. In this case, vehicles associated with the appellant's business have been stored, advertised at, collected and therefore traded from the appeal site even though this appears to have recently ceased. The number of vehicles stored, advertised for sale and traded, based on the figures supplied by the appellant, are not so insignificant that they are *'de minimis'*; that is to say they could be disregarded altogether.
22. The evidence on the number of vehicles at any one time that have been traded from the site and therefore the level of activity associated with the sale of vehicles is contradictory and minimal in detail from both main parties. Furthermore, I note that the appellant now has a forecourt to store and trade the vehicles at and from. At the time of my site visit (early afternoon) only one vehicle was visible at the property from the public realm. The regular complaints that the Council received may have originated from only one neighbour and those complaints may have been based on a neighbour dispute relating to the use of the private drive. In addition, the only third-party response to this appeal is supporting the appellant and they state that *'our property shares a substantial boundary with theirs and we have not been impacted in any way'*.
23. However, the appellant has also stated that *'Had my neighbour approached me he would have known (as several of our other neighbours did) that this arrangement was temporary as I had secured a Forecourt'*. This indicates that either the other neighbours had approached the appellant due to the level of activity arising from the vehicle sales or that Mr Gordon had considered it was necessary to explain to the neighbouring occupiers the nature of the additional activity that was occurring at the appeal property.
24. It is not uncommon for dwellinghouses to have a number of vehicles parked on their drives and these can include a vehicle associated with their profession such as a work van. I also recognise that vehicle owners may sell their vehicles privately from their dwellinghouses but in the main this is likely to be an infrequent occurrence.
25. Furthermore, the requirements of an enforcement notice do not preclude the appellant from carrying out what they are lawfully entitled to use the property for once the notice has been complied with. To that end it is open to the appellant to apply for a determination under sections 191/192 of the 1990 Act as to whether operating a specific level of business or working from the property is lawful. It is not a matter for this appeal to determine what level of vehicle sales, if any, may be regarded as incidental/ancillary to the primary use as residential.
26. In my experience, most sales of a vehicle would entail a physical viewing of the vehicle, including a test drive, especially as the vehicle would also need to be collected. If around 8 vehicles were regularly advertised for sale and stored on the appeal site the activity associated with the coming and goings of those potential customers including vehicle engine and audio noise, people conversing and the opening and closing of vehicle doors potentially could be significantly greater than would be expected to be associated with a dwellinghouse use.

27. Consequently, there are potentially significant on-site and off-site impacts and planning consequences arising from the mixed use comprising residential and the sale of vehicles. Nevertheless, there is little specific evidence from the appellant to indicate, on the balance of probability, that the level and character of activities that have occurred/occur at the site were/are not materially different from those associated with a dwellinghouse in residential use. The appellant has not discharged the burden of proof.
28. In conclusion, the appellant has not provided sufficient precise and unambiguous evidence to indicate, on the balance of probability, that the alleged breach of planning control does not constitute a material change of use of the land for the purposes of section 55 of the 1990 Act. As such, on the balance of probabilities, express planning permission is required for the making of a material change of use of the land for the mixed use comprising residential and the sale of vehicles. It has not been obtained. I find that the matters alleged, as corrected, constitute a breach of planning control. Therefore, ground (c) fails.

The ground (f) appeal

29. 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 any such breach.
30. Having regard to its requirements, the purpose of this notice is to remedy the breach of planning control. As a result, and in the absence of an appeal on ground (a) as set out in section 174(2) of the 1990 Act and a deemed planning application, the power available to me under section 176(1) of that Act only relates to whether the requirements exceed what is necessary to remedy the breach and not the planning merits of the case.
31. The appellant considers that the requirements of the notice are excessive as they would mean that he could not wash one of his vehicles without getting a visit from the Council. He also states that he regularly drives a vehicle home from his forecourt, that that vehicle may be for sale through his business and that it is excessive of the requirements to stop him from doing that. If that vehicle is at his home for a few days, he asks is that vehicle stored or parked.
32. With regard to valeting and storage I have removed the references to them through the ground (b) corrections. Moreover, as stated within the ground (c) appeal, the requirements of an enforcement notice do not preclude the appellant from carrying out what he is lawfully entitled to use the property for once the notice has been complied with.
33. Nonetheless, for clarity I intend to vary the requirements by deleting the wording of requirements 2.1 and 2.2 and replacing it with the wording '*2.1 all vehicles from the land which are not incidental or ancillary to the residential use of the land*'. I shall vary the enforcement notice prior to upholding it. The appeal on ground (f) succeeds to that extent.

Formal Decision

34. The appeal is allowed in part, on grounds (b) and (f), it is directed that the enforcement notice is corrected by:

- Deleting the sentence '*The approximate location of the change of use is edged in blue with blue hatching on a second attached plan referenced- ADC 2*' from the description of the alleged breach.
- Deleting the plan ADC-2 from the enforcement notice.
- Deleting the wording '*the sale, storage and valeting of vehicles*' within the description of the alleged breach and replace it with '*the sale of vehicles*'.
- Deleting the wording '*To cease the unauthorised change of use of vehicle sales, storage and valeting on the land*' from requirement 1 and replace it with '*Cease the use of the land for the sale of vehicles*'.

And varied by:

- The deletion of the wording of requirements 2.1 and 2.2 and replacing it with the wording '*2.1 all vehicles from the land which are not incidental or ancillary to the residential use of the land*'.

35. Subject to these corrections and variations, the enforcement notice is upheld.

D. Boffin

INSPECTOR