



Appeal Decision

Site visit made on 25 October 2021

by JP Roberts BSc(Hons) LLB(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 November 2021

Appeal A Ref: APP/C3240/C/21/3276731

Appeal B Ref: APP/C3240/C/21/3276879

Tresco, Trench Lock, Hadley, TF1 5SU

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended. Appeal A is made by Mrs Shakat Sultana Choudhary and Appeal B is made by Mr Mohammed Ramzan, both against an enforcement notice issued by Telford and Wrekin Council.
 - The notice was issued on 12 May 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the unauthorised change of use of the land from residential to a mixed use of residential and the repairing, servicing and storage of motor vehicles.
 - The requirements of the notice are:
 - 1) *Cease the use of the land for the repairing, servicing and storage of motor vehicles and motor parts, save where such use is for purposes incidental to the enjoyment of the dwelling house.*
 - 2) *To remove all motor vehicles and vehicle parts from the land, with the exception of any vehicles and vehicle parts that are used for purposes incidental to the enjoyment of the dwelling house.*
 - The period for compliance with the requirements is 1 month.
 - Appeal A is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
 - Appeal B is proceeding on the ground set out in section 174(2)(c) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act have lapsed.
-

Decisions

Appeal A

1. The appeal is dismissed, 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 as amended.

Appeal B

2. The appeal is dismissed and the enforcement notice is upheld.

Preliminary Matter

3. Although the appeals are made by different appellants, they relate to the same site and the same enforcement notice, and therefore it is appropriate that they be dealt with together. I shall deal with Appeal B first, as it involves a legal ground of appeal.

Appeal B – ground (c) that the matters alleged in the notice do not constitute a breach of planning control

Reasons

4. The appellant indicates that he ceased carrying out car repairs and servicing once he received the enforcement notice, and that he has only continued with vehicle recovery since that time. However, the appeal on this ground is that the matters alleged in the notice do not constitute a breach of planning control, and I am unable to confine my consideration solely to the vehicle recovery operation.
5. The onus of proof on a ground of this nature lies with the appellant, the test for which is on the balance of probabilities. The appellant argues that the site benefits from planning permission for “a change of use of land for ice cream vehicles and storage of ice cream” (sic), under reference Number: W74/0617. The appellant argues that the use of the land for a vehicle recovery business is effectively the same type of business. The appellant also points out that before this the site was used as a truck haulage yard, under planning permission Ref: W74/0192.
6. The lawful use as a truck haulage yard ended once the planning permission for the use for the storage of ice cream vehicles and ice cream was implemented. There is no doubt that it was implemented, as it is clear that the Council pursued enforcement action against a breach of condition in relation to the prohibition of maintenance. The Council argues that the ice cream van storage use has been abandoned, pointing to the subsequent uses for motor maintenance and residential purposes. The Courts have accepted that there are four tests to be applied in determining whether a planning permission has been abandoned - the period of non-use, the physical condition of the land or building, whether there has been any other use, and the owner’s intentions as to whether to suspend the use or to cease it permanently.
7. In this case, on the evidence, it has been over 25 years since the land was used for the storage of ice cream vans and ice cream. Again, on the evidence before me, there has been no material change to the land or buildings since that time, but the evidence indicates that land has since been used for motor maintenance and residential use. There is no evidence as to the owner’s intentions, but since the original operator of the ice cream business has moved from the site and sold the property, it can be inferred that there was no intention to continue the use. The appellant has not refuted the Council’s arguments, and on the balance of probabilities, I find that the ice cream van storage use has been abandoned.
8. Notwithstanding my finding on abandonment, the use of the land for the repairing, servicing and storage of motor vehicles is, as a matter of fact and degree, materially different from the very restricted storage use permitted by planning permission W74/0617. The permitted use was essentially a passive use, involving the parking of vans and goods, whereas the repairing and servicing of motor vehicles is an active use of a wholly different nature, with different planning impacts.
9. Even if I were to consider only the vehicle recovery aspect of the use, I consider that it is materially different from the mere storage of ice cream vans and ice cream. Vehicle recovery activities involve the recovery lorry leaving at

all times to recover vehicles and their return to the site, followed by the removal of the recovered vehicle from the lorry. This is likely to create considerable noise and is of a different nature from the mere storage of vans.

10. I therefore find that the matters alleged in the notice constitute a breach of planning control, and that the appeal on ground (c) fails.

Appeal A on ground (a) – that planning permission should be granted

Main issue

11. The main issue is the effect of the use for the repairing, servicing and storage of motor vehicles on the living conditions of nearby residential occupiers, with particular regard to noise and disturbance.

Reasons

12. The site lies in an area with a mixed character; Tresco is a detached bungalow at the eastern end of a line of dwellings which extend for some distance westwards along Trench Lock and Castle Street. To the east and rear of Tresco is a large car auction premises, part of the building also being used as a diner and for accountancy training. To the east of that is a car repair, serving and MOT business. On the opposite side of the road is a car sales business to the west, residential properties opposite and a petrol filling station and retail premises.
13. Whilst there is a mixed character in the area, Tresco itself and the line of houses to the west have a clear residential identity. The appeal site shares a long boundary with the house next door at Bryn Rose, and the workshop building lies adjacent the rear garden of that property. It is about 25m or so from the rear elevation of Bryn Rose, with only a hedge to separate them. Other residential properties on the west side of Bryn Rose are also close by.
14. Policy BE1 of the Telford & Wrekin Local Plan (LP) provides general design criteria against which all planning applications are assessed, one of them being that development should demonstrate that there is no significant adverse impact on nearby properties by noise, dust, odour or light pollution or that new development does not prejudice or undermine existing surrounding uses. Paragraph 130 of the National Planning Policy Framework says that planning policies and decisions should ensure that developments, amongst other things, create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users.
15. Several neighbours have referred to problems of noise associated with the use, and I consider that the close juxtaposition of the car repair use to residential properties means that it is inevitable that occupiers' living conditions would be seriously harmed. The use of flashing lights on the recovery vehicle at night-time is intrusive, and in conjunction with the out of hours recovery operations undertaken, when residents' peace and quiet is especially valued, these factors add to my finding that the use is not one which is appropriate in a residential area.
16. The appearance of a large recovery lorry and vehicles stored in the front and rear of the property results in a poor appearance that is incongruous in a residential context. This adds to my concerns.

17. I have given consideration as to whether planning permission should be granted for part of the use being enforced against, relating to the operation of the vehicle recovery business, but I consider that it would also result in material harm to nearby occupiers' living conditions, and therefore it would not be appropriate to grant such a permission.
18. I therefore conclude on the main issue that the use enforced against results in material harm to the living conditions of the occupiers of nearby residential properties, and conflicts with LP Policy BE1 and paragraph 130 of the Framework.

Other Matters

19. I have taken into account the owner's and occupier's rights to respect for property, under Article 1 of the First Protocol, which is a Convention right enshrined into UK law by the Human Rights Act 1998. However, this right is not absolute, and interference may be justified in the public interest. In this case, upholding national and local planning policy, and protecting the living conditions and rights of neighbouring residential occupiers are matters of legitimate public interest.
20. There are no lesser steps which could be taken to meet the policy objectives, and whilst I recognise that the interference with the appellants' rights would be significant, the burden of complying with the enforcement notice would be necessary and would not be disproportionate.
21. Although I have not been told anything of the employment implications of the business, it is likely to employ at least one person. Compliance with the notice would lead to the cessation of the business at this location. I have not been told whether other premises are available, and thus I can only afford limited weight to the economic implications arising from the notice.

Balancing exercise and conclusion on ground (a)

22. I have found that the use enforced against results in material harm to the living conditions of nearby residents. The use also conflicts with the development plan as a whole, and the harm is not outweighed by the employment benefits of the use. Accordingly, for the reasons given above, I conclude that the appeal on ground (a) fails and that planning permission should be refused.

Conclusions on Appeals A and B

23. For the reasons given above, I conclude that the appeals 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 as amended.

JP Roberts

INSPECTOR