



Appeal Decision

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 21 December 2021

Appeal Ref: APP/P4605/C/21/3276718

Land to rear of 176 Portland Road, Birmingham B16 9TD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Nadeem Mohammed against an enforcement notice issued by Birmingham City Council.
 - The notice was issued on 10 May 2021.
 - The breach of planning control as alleged in the notice is: Without planning permission, the material change of use from lock up garages (Sui Generis) to vehicle storage and dismantling (Sui Generis)
 - The requirements of the notice are : Permanently cease the use of the Premises for vehicle storage and vehicle dismantling and remove all vehicles and vehicle parts from the Premises.
 - The period for compliance with the requirement is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b) and (c) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The enforcement notice is quashed.

The Notice

2. Case law¹ has established that the appellant must be able to understand from the four corners of the notice what the allegation is and what the Council is expecting the recipient to do in order to comply with the terms of the notice.
3. The notice alleges a material change of use from lock up garages to vehicle storage and dismantling. However, the usual use of lock up garages in the absence of any further wording in the notice would primarily include vehicle storage and perhaps an element of vehicle dismantling for the vehicle that is stored. The way in which the lock up garages were used is not referred to in the allegation and the reasons for the notice do not assist in that respect. It is not clear from the wording of the allegation and the requirements what the material change of use actually is and that in turn impacts upon what is required to be done to comply with the notice.
4. Although the appellant has appealed on grounds (b) and (c), his appeal is very brief and is limited to not been able to park his car or carry out repairs to his own vehicle under the terms of the notice. When asked for clarification about the wording, the Council did say that the appellant was allowed to park his own car and repair his own vehicle and suggested that the wording be amended.

¹ Miller -Mead v MHLG {1963} 2 WLR 225

The Council also referred to other evidential matters such as the appeal site being used as a breakers yard and the Council appears to be suggesting that the original use was for use in association with domestic garages and that the extent of current use now is more akin to a commercial use. However, that is not what the current wording alleges and there is, for example, no reference to a mixed use in the allegation if that is what the Council intended to allege.

5. The appellant has not referred in his grounds of appeal to any use other than use for his own vehicle in terms of storage and dismantling which the Council has now said is acceptable. Nevertheless, that still leaves the fundamental issue of what exactly the nature of the allegation is which in turn is linked to what the appellant has to do to comply with the notice. Whilst I have wide powers to correct and vary the wording of the notice, I have to be satisfied that any corrections or variations do not cause injustice to either party.
6. The Council has not suggested amended wording for the alleged breach. In any event, any amendments are going to change the nature of, and widen the allegation which in turn is likely to result in injustice to the appellant as he could have provided more information to support his current grounds of appeal and may have pursued other grounds of appeal.
7. It is open to the Council to serve a further notice which clearly sets out the nature of the breach and the requirements, should it consider it expedient to do so, subject to the provisions of Section 171B(4) of the 1990 Act.

Conclusion

8. For the reasons given above, I conclude that the enforcement notice does not specify with sufficient clarity the alleged breach of planning control or the steps required for compliance.
9. It is not open to me to correct the error in accordance with my powers under section 176(1)(a) of the 1990 Act as amended, since injustice would be caused were I to do so. The enforcement notice is invalid and will be quashed.
10. In these circumstances, the appeal on the grounds set out in section 174(2)(b) and (c) of the 1990 Act as amended do not fall to be considered.

E. Griffin

INSPECTOR