



Appeal Decision

Site visit made on 14 December 2021

by M Madge DipTP, MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05/01/2022

Appeals A and B: APP/V2004/21/3278051 and 3278052 17 Marbury Park, Kingston upon Hull HU7 3DG

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - Appeal A is made by Miss Sophie Baldwin and appeal B is made by Mr Leon Crisp against an enforcement notice issued by Kingston-Upon-Hull City Council.
 - The enforcement notice was issued on 7 June 2021.
 - The breach of planning control as alleged in the notice is without planning permission the unauthorised change of use of a dwelling house to mixed use as a dwellinghouse and use for the purchase, storage and repair and sale of vehicles and watercrafts and their associated parts, including visits by members of the public to view and purchase the said items and for undertaking work to those items other than for the benefit of the occupants of the dwelling house.
 - The requirements of the notice are:
 - (i) Cease the repair of motor vehicles (cars, vans, motorcycles etc) which are not registered to those registered at the dwelling house.
 - (ii) Cease the repair of any watercrafts (boats, jet ski's etc) which do not belong to those registered at the dwelling house.
 - (iii) Cease the repair and maintenance and storage of engines or engine parts which are not a part/component of the vehicles described in parts (i) and (ii).
 - (iv) Cease customers/clients/members of the public visiting the address to drop off, purchase, pick up or work on any motor vehicles, watercrafts, engines, engine or similar items.
 - The period for compliance with the requirements is one month.
 - The appeal is proceeding on the grounds set out in section 174(2)(c) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is allowed, and the enforcement notice is quashed.

Reasons

2. To succeed on ground (c), the appellants need to show, on the balance of probability, that if the matters alleged occurred, they do not constitute a breach of planning control.
3. The appellants claim that the vehicles, watercraft and component parts at property belong to them and that appellant B works on these as and when necessary. When vehicles, watercraft or component parts are no longer required by the appellants' they are scrapped or sold. No further evidence relating to the matters alleged have been provided by the appellant. The Council has however provided a copy of the appellants' response to the planning contravention notice ("PCN response"). The PCN response confirms that cars, boats, vans, motorbikes, engines or parts/machinery, which do not belong to the appellants, are not stored, maintained, repaired or sold from the

- premises. It also confirms that customers/clients/members of the public do not visit the premises in connection with cars, boats, vans, motorbikes, engines or parts/machinery, which do not belong to the appellants.
4. A summary of evidence logs provided by 'two concerned enquirers [sic]' is provided by the Council. The summary catalogues 17 entries between 6 April 2021 and 5 May 2021. The activities listed at taking place include hammering, use of power tools, revving of motorbike engine, dismantling motorbike, smell of fuel and engine emissions, and 3 occurrences of people visiting the property. While the Council refers to photographic evidence, this has not been provided. Other than the reference to a motorbike, no evidence has been provided to identify if vehicles, watercraft or component parts were being worked on to cause the hammering and use of power tools. Even if it had, there is also no evidence to show that whatever was being worked on did not belong to the appellants.
 5. The appeal property has off-street parking facilities for approximately 2 vehicles. The Council did not dispute that the car parked during my visit belonged to appellant A. The rear garden is divided into 2 distinct parts, a children's play space and the rest gravelled with several storage facilities. Due to the haphazard way items had been placed, it was not possible to identify everything stored within the small metal shed. However, I saw a chainsaw, 2 outboard engines (1 in a state of disrepair), a motorbike sprocket and tyre, a collapsed rubber dingy and a leather motorbike jacket. A plastic storage box contained appellant A's horse-riding paraphernalia, a variety of wiring and what appeared to be mechanical parts. A metal toolbox was stored behind the metal shed. Elsewhere within the gravelled area were a canoe, a bicycle (with a wheel removed), 2 generators (claimed to be used in connection with the appellants' caravan), 2 sheets of metal, a wooden trailer side and 2 electrical items (possibly battery chargers but not confirmed). The items within the gravelled area and various storage facilities had the appearance of items owned, stored and used for purposes ancillary to the occupation of the dwelling house.
 6. For a change of use to be a breach of planning control, it must be material. S55(2) of the 1990 Act lists operations and uses of land that shall not be taken to involve development. S55(2)(d) states "*the use of any buildings or other land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such*". The matters alleged in section 3 of the notice do not specifically identify a 'material' change of use nor do they allege that the sale, repair, storage or purchase of vehicles and watercrafts or their associated parts are being carried out on a commercial basis. From the evidence before me, there is nothing to suggest that the activities undertaken are anything other than "*for the benefit of the occupants of the dwelling house*". As such, and on the balance of probability, the matters alleged fall within s55(2)(d) and do not constitute development requiring planning permission.
 7. For these reasons, the appeal shall succeed on ground (c). Accordingly, the enforcement notice is quashed.

M Madge

INSPECTOR