
Appeal Decisions

Site visit made on 10 February 2022

by Elaine Gray MA(Hons) MSc IHBC

an Inspector appointed by the Secretary of State

Decision date: 23 February 2022

**Appeal Refs: APP/H0724/C/21/3287891 (Appeal A) and
APP/H0724/C/21/3287892 (Appeal B)
115 Brierton Lane, Hartlepool TS25 5DR**

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Miss Sarah Waite (Appeal A) and Mr David Gould (Appeal B) against an enforcement notice issued by Hartlepool Borough Council.
 - The enforcement notice is dated 28 October 2021.
 - The breach of planning control as alleged in the notice is: Without planning permission, the change of use of a residential property to a mixed use residential with plant and machinery hire and sales.
 - The requirements of the notice are: (i) Remove all commercial vehicles, plant and machinery from the property. (ii) Cease the use of the property for plant and machinery hire and sales.
 - The period for compliance with the requirements is one month.
 - The appeal is proceeding on the grounds set out in section 174(2)(b) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice be amended by the deletion of all the text in the allegation and the substitution of it by the following text: 'Without planning permission, the material change of use of a residential property to a mixed use residential with plant and machinery hire and sales.'
2. Subject to this amendment, Appeals A and B are dismissed and the enforcement notice is upheld.

The enforcement notice

3. With regard to the wording of the notice, it alleges '... the change of use of a residential property to a mixed use ...'. The allegation is imprecise in that it refers to a 'change of use', whereas to reflect the definition of the term 'development' in s55(1) of the Act, it should state a 'material change of use'. I am satisfied that this correction does not cause any injustice, or make the notice more onerous.

The appeals on ground (b)

4. Ground (b) is that the breach of control alleged in the enforcement notice has not occurred as a matter of fact. Ground (b) is a legal ground of appeal and consequently, the onus is on the appellants to make out their case to the standard of the balance of probabilities.

The Council's evidence

5. The Council first received a complaint relating to an unauthorised use at the appeal site in March 2021. At their Appendix B, the Council provide three photographs taken on a site visit to the property in May 2021. These show the area in front of the house taken up with parked vehicles, mostly vans, and some machinery. One photograph also shows a trailer parked on the highway.
6. Similarly, the photographs in Appendix D, dated April 2021, show the presence of vehicles, machines and trailers at the site, and also vehicles parked on the other side of the road.
7. The Council contacted the appellants in March 2021 to discuss the breach. The appellants stated that, at that time, there was not enough room at the business premises and so No 115 was being used for storage. Mr Gould had made some enquiries at that time seeking an alternative premises, and was also looking at the potential of the back garden of No 115 for business use. However, as shown in the Council's Appendix 8, a further complaint was received in April 2021 that the unauthorised use was continuing, and that customers were coming to the property to pick up plant and machinery.

The appellants' evidence

8. The appellants state that Mr Gould has a separate business property where he works on machinery and conducts sales. Reference is made to an address at Burbank Street in Hartlepool where he has had a premises for 10 years. As part of the business, he receives part exchange in machinery which is routinely stored in various locations around the country.
9. However, due to restrictions related to the coronavirus pandemic, and a lack of storage at the business address, a need arose for Mr Gould to store a couple of machines, in the appellants' words, at No 115. They emphasize in their statement of case that the land has been used for storage purposes only, and this use was contained within the property. In her final comments, Ms Waite reiterates that some machinery was temporarily stored at the site, but she states that they have recently acquired a larger work yard and that the machinery has been moved.
10. With reference to the photographs of April/May 2021, she states that not all the vehicles photographed belonged to the appellants, and that the road no longer looks as it does in the images. Nonetheless, she confirms that trailers with machinery were parked outside the property for a time, and that work vehicles were present in the front garden.
11. I agree that it is not an offence, as such, for work vehicles to be parked on private land or on a highway where parking is unrestricted. However, highways matters are not relevant to the issue of the appeal, which is whether or not the alleged material change of use has occurred. Nonetheless, Ms Waite's comments seem to confirm that the work vehicles were within the property in connection with a business.
12. The appellants go on to say that following their move to Brierton Lane, they spent a summer tackling the overgrown front and rear gardens, cutting down mature trees and removing the stumps. This work required the presence of machines on the site, but the appellants assert that this was for personal use only.

Consideration

13. Whilst there may have been a need for machinery for domestic tasks, this does not amount to evidence that no business use was being carried on at No 115. By their own admission, it is clear that the appellants have carried on activities at the property that relate to their business. It is necessary to consider whether the plant and machinery business amounts to a material change of use of the land. The concept of material change of use is not defined in statute or statutory instrument; it is a question of fact and degree in each case. For there to be a material change of use, there needs to be some significant difference in the character of the activities from what has gone on previously.
14. In comparison to the Council's photograph of 2012, it seems to me that the number of vehicles and machines present on site in 2021 represents a significant degree of intensification of use. The coming and going of customers would be a further change to the character of the use of the land. At this level, the business use could not be regarded as de minimis and could not be taken to be ancillary to the residential use of the property. I am therefore satisfied that a material change of use took place, resulting in an unauthorised mixed use of No 115.
15. The appellants claim that these business activities were temporary and have now ceased. However, at the time of my site visit, I saw that there were still several vehicles parked in the front of No 115, which appeared to be above and beyond the number that would normally be associated with residential use.
16. Nonetheless, it makes no difference whether the breach has been genuinely stopped or not. S174(2)(b) is worded in the past tense, and so the question is whether the breach had occurred by the date of issue of the enforcement notice. As noted above, the onus of proof lies on the appellants in this case. They have not proved, on the balance of probabilities, that the breach of planning control as alleged did not take place.
17. The appeals on ground (b) therefore fail.

Conclusion

18. Appeals A and B are dismissed, and the enforcement notice, as amended, is upheld.

Elaine Gray

INSPECTOR