



Appeal Decision

Site visit made on 15 March 2022

by **M Madge DIPTP MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 28 March 2022

Appeal Ref: APP/T5150/C/21/3271897

213-217 Watford Road, Harrow HA1 3UA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Gayways Ltd against an enforcement notice issued by London Borough of Brent.
- The notice, numbered E/21/0047, was issued on 3 March 2021.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the land at the rear of the premises to the storage of shipping containers.
- The requirements of the notice are to:
 - STEP 1 Cease the use of the premises as storage of shipping containers.
 - STEP 2 Remove all shipping containers and their content, and remove all items associated with the unauthorised use from the premises.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(c), (d) and (f) of the Town and Country Planning Act 1990 as amended.

Decision

1. The enforcement notice is quashed.

Matters concerning the notice

2. The notice alleges '*a material change of use of the land at the rear of the premises to the storage of shipping containers*'. The plan attached to the notice only identifies the enclosed yard, rather than the whole of the premises at 213-217 Watford Road.
3. Where a material change of use is alleged it is necessary to first identify the extent of the planning unit. *Burdle*¹ sets out the 3 criteria for determining the correct planning unit:
 - (a) *Whenever it is possible to recognise a single main purpose of the occupier's use of his land to which secondary activities are incidental or ancillary, the whole unit of occupation should be considered.*
 - (b) *Even though the occupier carries on a variety of activities and it is not possible to say that one is incidental or ancillary to another, the entire unit of occupation should be considered.*
 - (c) *Where there are two or more physically separate and distinct uses, occupied as a single unit but for substantially different and unrelated purposes, each area used for a different purpose (together with its incidental and ancillary activities) ought to be considered a separate planning unit.*

¹ *Burdle v Secretary of State for the Environment* [1972] 1 WLR 1207 (Div Court)

4. In this case, the business sells landscaping machinery, tools and other associated paraphernalia as well as offering a landscape machinery repairs service. The rear yard area is used in association with the business and gates on to the rear service lane provide vehicular access to the workshop and storage areas. There are 2 shipping containers in the yard, and these are used for the storage of retail goods and tools ancillary to the use of No213-217.
5. No213-217 and the yard to the rear are used by the appellant in connection with the operation of their business. There is therefore a single planning unit which encompasses the ground floor of the building and the rear yard. Furthermore, the shipping containers are not themselves being stored; they are being used to provide ancillary storage facilities for the business. The planning unit therefore clearly falls within criteria (a) above.
6. It is implicit in the allegation that it is the shipping containers that are being stored on the land. If the land were being used for the storage of shipping containers it would be reasonable to assume that the shipping containers would be empty and that they would be removed and/or replaced from time to time. This is not the case here.
7. The allegation has incorrectly identified the breach of planning control and the notice is invalid. Correcting the allegation would fundamentally change the scope of the notice. The appellant's case relates wholly to the storage of shipping containers and does not address the use of the shipping containers in connection with their business operations. Correcting the notice would therefore cause injustice to the appellant.
8. For the reasons given above, I conclude that the enforcement notice does not specify the alleged breach of planning control with sufficient clarity. 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.
9. In these circumstances, the appeal on the grounds set out in section 174(2)(c), (d) and (g) of the 1990 Act as amended do not fall to be considered.

M Madge

INSPECTOR