



Appeal Decision

Site visit made on 22 February 2022

by Thomas Shields MA DipURP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 March 2022

Appeal Ref: APP/Z5060/C/21/3286410

Smart Hand Car Wash, 154 High Road, Romford, RM6 6NT

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 ("the Act").
- The appeal is made by Mr Richard Wood against an enforcement notice issued by the Council of the London Borough of Barking and Dagenham.
- The enforcement notice was issued on 12 October 2021.
- The breach of planning control alleged in the notice is without planning permission, the unauthorised material change of use to a car wash.
- The requirements of the enforcement notice are:
 - i) Cease the use of the land at the property as a car wash;
 - ii) Remove all alterations and fixtures related to unauthorised use for car wash business including the canopy at the front of the premises; and
 - iii) Remove all subsequent waste material from the property
- The period for compliance with the requirements is 1 month.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (d) and (f) of the Act.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with a correction and variation in the terms set out below in the Formal Decision.

Appeal on ground (b)

1. The ground of appeal is that the matters alleged in the notice have not occurred as a matter of fact.
2. The appeal site is shown by the land edged in blue on the plan attached to the enforcement notice. It includes both the larger building to the rear and the forecourt area which fronts onto High Road. In the appellant's grounds of appeal, however, it is submitted that only the front forecourt of the appeal site is used for car washing and valeting services. I also found that to be the case from my own observations; the rear building was used for other activities not attacked by the notice.
3. I raised this matter with the parties. The Council agreed that the land affected by the notice should be reduced to relate solely to the alleged car wash use occupying the front forecourt area. The appellant has not objected to such a correction. I will therefore delete the notice plan and substitute it for another to correctly show the land affected. I am satisfied that no party would suffer injustice by the correction.
4. The appeal on ground (b) succeeds to this extent.

Appeal on ground (d)

5. For an appeal on ground (d) to succeed an appellant must demonstrate that at the time the notice was issued it was too late for enforcement action to be taken. In this case it has to be shown that the use of the appeal site as a car wash commenced ten or more years before the date on which the notice was issued (hence, before 12 October 2011) and continued without material interruption throughout a ten year period. The test of the evidence is on the balance of probabilities.
6. The Council's evidence¹ includes images of the appeal site, showing the use of the forecourt area solely for car sales in April 2019, suggesting that use of the forecourt as a car wash commenced later and thus less than ten years prior to the notice being issued.
7. There is little historical documentary evidence of the use of the land since the 1960's. However, the appellant confirms that the use of the forecourt as a petrol filling station ceased quite recently due to the adverse effect of the Coronavirus pandemic. The current car wash serves approximately 40 to 50 customers' vehicles per day.
8. The appellant refers to a 1956 planning permission relating to a larger site, (including the forecourt area now subject of the appeal) and a letter from the Council, dated 1 August 1966. However, the detail of the letter does not relate to the use of the land as a car wash. Moreover, the planning permission was for a *petrol filling station, together with showroom and office accommodation and lock up garages at rear*. No part of the land was permitted to be used as a car wash as a primary use of the land.
9. While there may well have been some washing of cars being an ancillary activity to the permitted *primary* use for selling cars and petrol (acknowledged in the appellant's appeal statement), there is no convincing evidence before me to suggest it was a separate *primary* use of any part of the land, as is the case now. Any ancillary use would not have triggered a material change of use of the primary use so as to constitute "development" as defined at s55 of the Act, and hence would not amount to a breach of planning control. Had an appeal on ground (c) been made it also would have failed for these reasons.
10. Much of the appellant's remaining evidence relates to the acceptability of the car wash use in the context of the Council's Development Plan policies. However, no appeal has been made on ground (a) that planning permission ought to be granted, and these matters are not relevant to an appeal on ground (d).
11. Having regard to all of the evidence before me I conclude, on the balance of probability, that the use of the forecourt as a car wash did not commence more than 10 years before the notice was issued. Therefore it was not too late for the Council to take enforcement action and the appeal on ground (d) fails.

Appeal on ground (f)

12. An appeal on ground (f) is a claim that the requirements of the notice exceed what is necessary to remedy the breach of planning control, or, as the case

¹ Council Statement of case, Google street view images, Appendices 1 and 2

may be, to remedy any harm to amenity resulting from the breach. In this regard the notice requires the use to completely cease, and to remove structures associated with the use. It is clear therefore that the purpose of the notice is to fully *remedy the breach of planning control*.

13. Requiring the unauthorised use to cease would do no more than to remedy the breach that has occurred. Consequently, it cannot be an excessive requirement.
14. However, in respect of the second requirement at Section 5 of the notice, there is no evidence to suggest that the large flat canopy was erected to facilitate the use as a car wash. Indeed, it is clear from the submitted photographic and documentary evidence that the canopy formed part of the petrol filling station structures, covering petrol pumps that were originally in place. Since it was not constructed integrally to the use, or facilitated the unauthorised use, then requiring its removal is an excessive requirement. Furthermore, an enforcement notice should be clear as to its requirements. The requirement to "remove all alterations and fixtures related to an authorised use for car wash business" is highly ambiguous. There is nothing in the Council's evidence which clarifies what these alterations and fixtures might be. For these reasons I will delete the second requirement from the notice.
15. Additionally, since there is now nothing to be removed, the requirement to remove all subsequent waste material becomes otiose. I will therefore also delete this requirement.
16. The appeal on ground (f) therefore succeeds to the extent described above.

FORMAL DECISION

17. It is directed that the enforcement notice be corrected and varied by:-
 - removing the existing plan attached to the notice and replacing it with the one at Annex A to this Decision;
 - at Section 2, deletion of the word "blue" and substitute instead the word "red";
 - at Section 5, deletion of the second and third bulleted requirements.
18. Subject to the correction and variations the appeal is dismissed and the enforcement notice is upheld.

Thomas Shields

INSPECTOR

Enforcement Notice Plan

