



Appeal Decision

Site visit made on 15 February 2022

by M Madge DIPTP MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 April 2022

Appeal Ref: APP/W2465/C/21/3286026

115 Uppingham Road, LEICESTER LE5 4BP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Faruk Sabr against an enforcement notice issued by Leicester City Council.
- The notice was issued on 8 September 2021.
- The breach of planning control as alleged in the notice is without planning permission the material change of use to a hand car wash service and window tinting service at the Site.
- The requirements of the notice are:
 - I. A Cease the use of the Site as a car wash.
 - II. Cease the use of the Site for vehicle window tinting.
 - III. Remove all equipment structures and erections temporary buildings storage containers canopies and machinery from the Site.
- The period for compliance with the requirements is 2 months.
- The appeal is proceeding on the ground set out in section 174(2)(d) of the Town and Country Planning Act 1990 as amended.

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

Preliminary matter

1. This appeal is travelling with reference APP/W2465/W/21/3280398, which is an appeal against the Council's refusal of planning permission for the erection of purpose-built structures to accommodate (Class E) office, w/c, car wash, valet service and window tinting business. That appeal will be the subject of a separate decision.

Matters concerning the notice

2. Planning permission¹ for use of the site as a hand car wash, including a single small temporary building to house a water recycling system, was granted for a temporary period. A further temporary planning permission was granted² for the use of the site as a hand car wash and tyre fitting facility. Neither of these planning permissions included the window tinting service.
3. While a hand wash car service operates at the site, the 2 buildings on site are different in terms of size and location to those previously granted planning permission. A large canopy has also been erected over the central part of the site for use in connection with the window tinting business. The Council consider the window tinting service to be an industrial process and, in the absence of any evidence to the contrary, I see no reason to disagree. The use of the site as a hand car wash service and window tinting service constitutes a

¹ Council reference 201507044

² Council reference 20161183

mixed use of the site. The main appeal parties understand what is being alleged and varying the allegation, to clarify that the matters alleged constitute a mixed use of the site, would not cause injustice. I shall proceed on that basis.

4. In section 5 of the notice, requirement 5.1 I. begins with a superfluous 'A'. This is a typographical error, and no injustice would arise from its deletion. The notice will be varied accordingly.

Appeal on ground (d)

5. An appeal on this ground is that it was too late for enforcement action to be taken at the date the notice was issued. The onus of proof is on the appellant and the relevant test is the balance of probability. To succeed, the appellant needs to show that the mixed use of the site as a hand car wash and window tinting service has operated for 10 years (s171B(2)) starting on or before the material date. The material date is 8 September 2011 and any 10-year period is relevant.
6. The appellant claims that their development has no adverse impact upon the character and appearance of the listed building, St Barnabas Church, and their use of alternative machinery has resolved the noise issues for neighbouring occupiers. These arguments relate to planning merits, and do not provide any evidence to show the business has operated for 10 years or longer.
7. While the Council's evidence does not show when the mixed use began, it does show that the use as a hand car wash began in 2015, which is some considerable time after the material date. It is reasonable to conclude therefore that the mixed use occurred on or after the hand car wash service began. In the absence of any evidence from the appellant to dispute or otherwise call into question the Council's evidence I shall give it substantial weight.
8. The appellant has failed to demonstrate, on the balance of probability, that a mixed use as a hand car wash service and window tinting service has operated continuously for a period of 10 years beginning on or before 8 September 2011.
9. For these reasons, the appeal on ground (d) fails and I conclude that the appeal should not succeed. I shall uphold the enforcement notice with correction and variation.

Formal Decision

10. It is directed that the enforcement notice is corrected by:

In section 3. THE BREACH OF PLANNING CONTROL ALLEGED, the insertion of the words 'mixed use of' before the words 'hand car wash service...'

And varied by:

In section 5. WHAT YOU ARE REQUIRED TO DO, at 5.1 steps to be taken I. the deletion of the word "A".

Subject to the correction and variation, the appeal is dismissed, and the enforcement notice is upheld.

M Madge

INSPECTOR