



Appeal Decision

Site visit made on 18 March 2022

by Anthony J Wharton BArch RIBA RIAS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 April 2022

Appeal Ref: APP/R4408/C/21/3283505

**Premises and Land between 4 and 6 Albert Street,
Cudworth, Barnsley S72 8AP**

- 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 appeal is made by Mr Stephen Cox against an enforcement notice issued by Barnsley Metropolitan Borough Council.
 - The enforcement notice numbered 2020\ENQ\00436, was issued on 9 September 2021.
 - The breach of planning control as alleged in the notice is as follows:
The material change of use of the land to one of a mixed usage of repair of motor vehicles (B2 General Industrial) and a Sui Generis use for the undertaking of horsebox conversions and the related fabrication of motor vehicles.
 - The requirements of the notice are as follows:
 - (i) Cease the unauthorised change of use relating to the mixed usage of repair of motor vehicles (B2 General Industrial) and a Sui Generis use for the undertaking of horsebox conversions and the related fabrication of motor vehicles.
 - (ii) Remove from the land all vehicles, parts, materials and equipment associated with the unauthorised use described in paragraph (i) above.
 - The period for compliance with the requirements is one month.
 - The appeal is proceeding on grounds (c) and (g) only as set out in section 174(2) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, any appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
 - **Application for Costs**
An application for a full award of costs has been made by Mr Stephen Cox against Barnsley Metropolitan Borough Council. This is the subject of a separate decision.
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Decision

1. The appeal is allowed. See formal decision below.

Matters of clarification

2. The appeal is only proceeding on grounds (c) and (g) and thus the merits of the case are not before me.

Background information

3. The appeal site is located on Albert Street in the village of Cudworth, which lies to the north-east of the town centre of Barnsley. The street primarily consists of residential dwellings but a previous tenant of the appeal property had operated a MOT and car repair garage from the land. At present the garage is not a registered MOT garage but pre-MOT checks are still carried out on the site, along with other car repairs. The main part of the Appellant's business, however, now relates to the conversion of previously used vans to horseboxes which is the subject of the enforcement notice.

4. On 24 June 2020 a Temporary Stop notice (TSN) was served by the Council requiring the horsebox conversion business to stop work for a 28 day period. The allegation was that a breach of planning control relating to an unauthorised change of use of land and buildings from a *'builder's merchants to a vehicle workshop'*. The landowner's agent informed the Council that there was a Lawful Development Certificate (LDC) relating to the appeal site for *'use of premises as motor vehicle repairs/MOT testing centre (Class B2) of the site as a garage'*. The Council had indicated that they could not find anything to corroborate this and that the notice would remain in effect. However, it was subsequently established that the LDC was clearly held on the Council's records.

5. In August 2020 the appellant's agent wrote a letter of complaint to the Council and confirmed that the current use of the premises (which has remained unchanged to the present day) for horsebox conversions and vehicle repairs remained within the same use class (Class B2) as specified on the LDC and, therefore, that the alleged change of use had not occurred. In September 2020 the TSN was withdrawn as being factually incorrect.

6. The Council's responded to the agent's letter on 9 September 2020 and stated: *'The CLU concerns the use of the land for motor vehicle repairs/MOT testing centre. We understand that some of the works were concerned with converting vans into horse boxes which is something that would not be done by a motor vehicle repairs business. Therefore, planning permission would be required for this use'*.

7. On behalf of the Appellant it is argued that the Council's logic was legally incorrect in law because this was the wrong question. It is contended that the correct question is whether or not the current use of the site falls within the remit of the established lawful use, Class B2.

The Appeal on ground (c)

8. To be successful on this ground the onus is on the Appellant to demonstrate that a contravention of planning control has not occurred. There is clearly a 1999 LDC in place relating to the appeal site being for *'use of the premises as motor vehicle repairs/MOT testing centre (Class B2) of the site as a garage'*. Thus, the lawful use class of the premises is Class B2, General Industrial use. This is now accepted by the Council.

9. However, the Council contends that *'the re-purposing of motor vehicles for Horse box conversions, along with the associated fabrication is not covered under the scope of the LDC'* and that *'the commercial activities being run from the land introduce operations that are not typical of a traditional motor vehicle repairs/MOT testing centre'*. It is contended that the use being carried out is Sui Generis and, therefore, that there has been a material change of use of the premises. The enforcement notice describes the planning impacts which are alleged to be unauthorised and detrimental to residential amenity. However, as indicated above, the planning merits are not before me.

10. On behalf of the Appellant it is argued that the Council's logic is fundamentally flawed. It is argued that the need for the LDC to specifically encompass horsebox conversion activities (or any other B2 use) is irrelevant and that the key question is whether or not such activities represent a breach of planning control by virtue of *development* requiring planning permission under Sections 55 and 57 of the 1990 Act, thereby triggering Section 172 (1) (a).

11. It is argued that the vehicle to horse box conversion operations fall squarely within the B2 General Industrial use classification and, therefore, that no breach of planning control has occurred. It is stressed that the existing LDC clearly specifies 'Class B2' in its description, acknowledging that the use of the premises as motor vehicle repairs and MOT testing is a General Industrial use under the Use Classes Order. It is indicated that the enforcement notice acknowledges this by including the term 'B2 General Industrial' in the description of the alleged breach of planning control.

12. The appellant indicates that, in describing the disputed use as '*horsebox conversions and the related fabrication of motor vehicles*' this could be interpreted as being two separate activities. However, on behalf of the appellant it is stressed that it is, essentially, one activity: namely the conversion of vehicles (ordinary vans) to horsebox vans and occasional subsequent repairs.

My assessment

13. The main issue is whether or not the character of usage of the activities at the premises fall outside of a 'Class B' General Industrial use. This must be based on planning judgement and as a matter of fact and degree.

14. Class B2 is defined at Article 3(2) of the Use Classes Order 1987 (as amended) as a 'Use for the carrying on of an industrial process other than one falling within class B1'. The term '*industrial process*' is defined in Article 2 (interpretation): means a process for or incidental to any of the following purposes: (a) *the making of any article or part of any article (including a ship or vessel, or a film, video or sound recording)* and (b) *the altering, repairing, maintaining, ornamenting, finishing, cleaning, washing, packing, canning, adapting for sale, breaking up or demolition of any article; or'*

15. During my site visit the details of the process of the conversion works were outlined to me; all of the power tools used were demonstrated and samples of materials were cut and rivetted. I noted that used vans were brought to the premises. Within a two-to-three-week period a van is converted by removing the roof, sides and back, leaving the floor, chassis and the driver/passenger cab. A new aluminum floor is inserted, and a new bespoke body is then constructed using GRP panels, cut to size to the customer's specification. This process includes fixing panels by rivets, glue and bolts. A personnel door is constructed to the rear and a large opening with ramp for the horse to the side. The vans are fitted out to the customer's specification and the horsebox van is then completed. It is indicated that customers occasionally return horseboxes for repairs.

16. Having inspected the premises and noted how the operations are carried out, I agree with the Appellant that the activities unambiguously fall within the Class B2 use. I agree that the use comprises the '*making, altering, finishing, breaking up of any article*' (in this case vans as motor vehicles) as set out in Article 3(2). It follows that I consider that whether the activity relates to '*repairing motor vehicles*', or (in this case) '*converting and altering motor vehicles to form an alternative form of motor vehicle*', both fall within the Class B2 General Industrial use as approved on the site.

17. The '*repairing of motor vehicles*' covers a very wide spectrum of works or operations carried out within garage premises. These can range from minor repairs to engine or other components, through to a rebuilding of a car's bodywork panels following an accident. In this case the bodies of the vans are re-built to form vehicles for the transporting of horses. It is not a situation whereby the horseboxes are built from scratch on some form of industrial assembly line.

18. As indicated, on behalf of the appellant, the Council does not appear to have alleged that a material change of use has occurred as a result of the subdivision of the planning unit or an intensification of use. In this case the unit of occupation comprises the two interconnected buildings as a single planning unit and there is no other activity which in substance amounts to any separate use. The works related to the horsebox conversions, in my view, equate to *'any other alteration or re-building of a motor vehicle'*.

19. There has been no intensification of use. The Council has not disputed the Appellant's reference to just 1 horsebox conversion being completed approximately every two to three weeks; 4 to 5 horsebox vans being repaired annually; the pre-MOT servicing of 5 to 6 cars per week and 1 or 2 deliveries per week. Nor has it questioned the claimed opening hours of 08.00hrs to 16.00hrs Monday to Friday.

20. In referring to the case of *Brooks and Burton Ltd v Secretary of State for the Environment* [1977] 1 W.L.R. 1294, it is stressed on behalf of the appellant that *'the intensification of a use within a category (in this case Class B2) cannot constitute development unless and until its effect is to take the use outside the general category altogether'*. In this case I do not consider that there has been any intensification of use and thus the use carried out is not outside of the Class B General Industrial use.

21. With regard to the Council's contention that the operations, as now being carried out, are *'not typical of a traditional motor vehicle repairs/MOT testing centre'* and that this *'results in a significant increase in noise from said works of which is unacceptable'*, it is arguing that there has been such a significant change in the character of the use that it takes the activities outside the Class B2 use. However, other than the references to an increase in noise, the Council has not provided any convincing evidence to demonstrate that the character of usage, from what is allowed by the 1999 LDC, has significantly changed. Furthermore, several neighbours, including the one living next door to the premises have written in support of the Appellant's operations

22. In the case of *Hertfordshire CC v Secretary of State for Communities and Local Government* [2012] EWHC 277 (Admin) it was found that it is essential to establish a *'baseline'* of what may be encompassed within the permitted use and that it is the change from the boundary of the permitted use which must be material. It is argued, on behalf of the Appellant, that the Council has not acknowledged the *'baseline'* position of the lawful Class B2 use.

23. References are made to typical activities associated with the lawful vehicle repair/MOT testing activities and that they are likely to include various noise-producing activities (as well as fumes etc.). These would include electrical/mechanical impact drivers to remove tyres; car engines revving/tuning; panel cutting and beating (repairing damage to bodywork); paint spraying; welding; and use of compressed air equipment. From my inspection of the site and from the physical demonstration of the power tools used, in terms of noise and disturbance generated, I consider that the character of usage relating to the conversion of vans to horseboxes falls squarely within any baseline position regarding car repairs and MOT testing.

24. I have noted the Appellant's references to The Use Classes Order making a clear distinction between Class B2 general industrial use and B1 (now Class E) light industrial use. The latter is defined as *'a use which can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit.'* I agree that by implication, a Class B2 General Industrial use has the potential to impact on living conditions in a residential area and that noise and other types of emissions are therefore an integral part of the character of a Class B2 use.

25. I accept that the Council had considered it expedient to take enforcement action against the use. However, the representations in support of the Appellant, amongst other things, accept that in relation to this particular site some noise is to be accepted. As indicated above the merits of the use are not before me but if there are serious planning issues relating to excessive noise or on-street parking, the Council have other options to consider, and these issues could also have occurred with the previous operations on the site.

26. In conclusion on this ground of appeal and for the above reasons, I agree with Counsel's opinion made on behalf of the Appellant that:

- The vehicle conversion works are a classic example of General Industrial works falling within Use Class B2.
- Changing from one activity to another within Use Class B2 does not require planning permission.
- Carrying out different activities within the same use class within a single planning unit by the same individuals does not trigger a material change of use. Nor would a variation in the precise mix of such activities taking place.

27. It follows that, in my view, there has been no breach of planning control by virtue of a material change in use of the premises and land between 4 and 6 Albert Street, Cudworth, Barnsley S72 8AP and that the appeal must succeed on ground (c). The enforcement notice will, therefore, be quashed and the Appeal on ground (g) does not need to be considered.

Formal Decision

28. The appeal is allowed and the enforcement notice, relating to the premises and land between 4 and 6 Albert Street, Cudworth, Barnsley S72 8AP, is quashed.

Anthony J Wharton

Inspector