



Appeal Decision

Site visit made on 22 March 2022

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 April 2022

Appeal Ref: APP/M1595/C/21/3274640

Lakshmi Service Station, 36-38 Southend Road, Grays, Essex RM17 5NJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by College Service Station against an enforcement notice issued by Thurrock Borough Council.
 - The notice was issued on 12 April 2021.
 - The breach of planning control as alleged in the notice is without planning permission the material change of use of the land from a *sui generis* service station use to a *sui generis* service station and separate hand car wash including valet use.
 - The requirements of the notice are to:
 - i. Cease the unauthorised hand car wash including valet use on the land.
 - ii. Remove from the land all equipment, materials, pertaining to the unauthorised hand car wash including valet use.
 - iii. Remove from the land all vehicles, equipment, paraphernalia, waste and debris resulting from compliance with the requirements i and ii.
 - The periods for compliance with the requirements are: seven days for step i and two months for steps ii and iii.
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (d), (f) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice is corrected and varied by: the deletion of the phrase "including valet use" from the allegation and paragraphs 5.i and 5.ii of the requirements and the deletion of the word "of" from paragraph 5.iii. Subject to the corrections and variations, the appeal is dismissed and the enforcement notice is upheld.

The Notice

2. An enforcement notice must enable every person who receives a copy to know exactly what in the Council's view constitutes the breach of planning control. In this case the description of the development in the notice alleges a material change of use from a *sui generis*¹ service station use to a *sui generis* service station and separate hand car wash including valet use.
3. The phrasing of the allegation uses the word "including", which is a word of expansion not contraction. It implies that there might be more items in the list of words that follow "including" and for this reason the allegation is unclear to the appellant in that it has not been expressed precisely.

¹ *Sui generis* is a Latin term meaning "in a class of its own". Certain uses are specifically defined and excluded from classification by legislation, and therefore become "*sui generis*". Fuel stations are one of these uses. Source: The Planning Portal <https://www.planningportal.co.uk>

4. The appellant takes issue with the phrase “valet use”, submitting that a valeting use is a highly specialised service intended to achieve an “as new look”. It typically costs £140, often takes a day or two and covers the repair of paint chips. The appellant states he only offers a hand car wash.
5. The submitted photographs of the signs around the site explain what is offered for each hand car wash service. Under the heading “Magic hand car wash” a “No1” is described as “Hand washed, wheels cleaned”. Whereas a “No3” is a “Mini valet” described as “Hand wash, shower wax, interior and boot Hoover, windows in and out, dashboard and all plastics, cleaned and polished, bumper treatment, free air freshener”. A “No4” is “4x4’s, jeeps, people carriers, wash and dry £7, full valet £65, engine cleaned, interior washed, exterior polished”.
6. It seems to me that the signs make use of the word “valeting” to describe different levels of hand car wash service. The definition² of “to valet” means to clean, especially the inside of something. As such, I find there is no need to refer to valeting. It is sufficient to describe the activity as hand car washing as, depending on the fee paid, cars are cleaned either outside only or outside and inside, to varying degrees.
7. To correct the notice and vary the steps required by the deletion of the words “including valet use” would not cause injustice to either the appellant or the Council. This is because the remaining part of the allegation covers the activities that the Council and the appellant describe as taking place on site. I shall therefore proceed on the basis that the allegation is without planning permission, the material change of use of the land from a *sui generis* service station use to a *sui generis* service station and separate hand car wash.

Grounds (b) and (c)

8. In appealing on ground (b) the burden of proof is firmly on the appellant to demonstrate with relevant, clear and unambiguous evidence that the alleged breach of planning control has not occurred as a matter of fact. Under a ground (c) appeal the onus of proof is on the appellant to show that there has not been a breach of planning control.
9. The appellant disputes that there has been a material change of use amounting to development and, as such, it is necessary to ascertain the correct planning unit and the present and previous primary uses of that unit. Case law has established that the test starts with the unit of occupation and turns on the concept of physical and functional separation.
10. The parties refer to the planning history of the site and there are two applications that are relevant to the appeal. The first is an outline planning application that was granted on 12 February 1970 (ref:70/00013/OUT) and the second is a full application (ref 70/00506/FUL) that was decided later that year. No date is provided for when the full application was granted but the Council state that revised plans were received on 13 August 1970 so it would have been after this date.
11. An outline planning application is, as the name suggests, where an applicant seeks approval in principle for a proposed development. Full details are not required to be submitted other than information regarding the boundaries of the site. If granted, conditions are attached setting out the reserved matters

² Cambridge English Dictionary

on which further detailed applications need to be submitted and approved before development can begin on site. The description in the outline application was "Redevelopment of existing filling station to a self-service petrol filling station with two drive through car washing units". The reserved matters required details of the siting, design and external appearance of the proposed buildings and the means of access to the site to be submitted and approved within three years of the date of the application.

12. It appears that no such details were subsequently submitted as none are listed in the Council's detailed planning history of the site, which dates back to 1948. As such, I consider that the outline application expired and was not implemented and the appellant appears to be misinformed about the status of the outline application.
13. The later full planning application described the development as "self-service petrol filling station, with accessory shop, control office, store, staff room, toilets and one automatic car wash". This would have been accompanied by detailed plans otherwise the Council would not have been able to determine it. This approval sets out that, as well as the self-service station, it also relates to an "accessory" shop, control office, store, staff room and toilets. These aspects of the development were built as I saw at my site visit. It is therefore reasonable to assume that the remains of the car wash building that is on site today is the "one automatic car wash" permitted by this application. Certainly, in terms of its size, and allowing for the brushes that have now been removed, it is my view that it would only have been able to wash one car at a time.
14. No details are provided about how the site was used from when it first opened until 1997 but it appears it was all in one ownership, as adduced from the Land Registry extract. From the description of the development in the application it appears that the principle use of the site was to sell fuel as the other aspects of the development are prefaced by the word "accessory". This actually means something which can be added to something else to make it more useful. In this case a small shop and an automatic car wash add to the usefulness of the petrol filling station. In planning terms these activities are described as ancillary uses, in that they support the primary activity of the site.
15. The appellant was employed as a licensee of the College Service Station, as it was then known, from December 1997 to 2012. He was then given an opportunity to buy the business and the leasehold of the site. In order to do this, he commissioned a valuation report in December 2011 prior to the purchase of the leasehold on 16 July 2012. This provided a snapshot of the business and showed that the car wash income amounted to 13% of gross profit.
16. When the appellant began running the service station in 1997, he first states that the automatic car wash was no longer in operation and a jet wash had been installed in its place. I saw the old jet wash machine at my site visit, which is installed to the east of the shop. Given the limited extent of the length of the hoses from the machine, it is reasonable to assume that cars were parked to the east of the shop to be washed.
17. However, in his Final Comments, the appellant states that the valuation report mentions the operation of a jet wash *and* (my emphasis) a car wash as "Valeting: jet/car wash and air/vac towers". The appellant himself also refers

to both a car wash, a jet wash and vacuuming facilities throughout his Final Comments.

18. Historic aerial photographs and Google Street View images submitted by both parties show that the automatic car wash has been there a long time but they do not show whether it was in use or disused. The images from 2009 and 2012 show that the brushes were still in place inside the automatic car wash but in the 2012 image the "car wash" fascia sign has been removed from the car wash building. At this point in time advertising for the car wash was low key being limited to the totem pole sign and the car wash building. Google Street View images also show that there was a separate vacuuming machine at the front of the site adjacent to the pavement. This is still there today but appears to be broken and not in use.
19. When the appellant became the licensee in 1997 it seems the site was one planning unit and there was a physical and functional connection with all the activities on site. The valuation report showed that the car wash, in terms of turnover, was an ancillary part of the use of the site, controlled from the shop/office.
20. Once the appellant acquired the leasehold of the site in 2012, he changed the management of the site as he was no longer involved day to day. Instead, he took on a commission operator in the latter part of 2012 to run the petrol station. This person takes a commission from the petrol sales and retains the income from the shop. He subsequently made a similar arrangement for the operation of the car wash but he does not state when this began. In effect, petrol sales and the running of the car wash were sublet.
21. At this point the site remains in the same ownership but the operation of the car wash is no longer an ancillary use to the main use of the site, as it has now become a separate entity. The functional relationship on site has changed in that there are now two activities on site run separately from each other. In addition, they are run from two different bases in that the hand car wash operates from a new portable building to the east of the shop and they each employ different staff, with the hand car washing appearing to employ significantly more people³.
22. It is not known when automatic car washing and jet washing were replaced by hand car washing. A third party states it was in 2014 but this assertion is uncorroborated. Google Street View images certainly show hand car washing in operation in July 2016 (based on the new hand car wash signage) but the available image prior to this is dated 2012 so it could have begun between 2013 and 2016. There is certainly a significant change in the amount of advertising for the new hand car wash around the site visible in the 2016 image with banner advertising attached to the southern boundary wall. Advertising is also affixed to the windows of the automatic car wash building, boards setting out costs and different offers are attached to the wall of the shop and the back wall of the site and an 'A' board has been placed on the pavement outside of the site.
23. The aerial views show a new building on site to the east of the shop. This appears to be the portable building I saw on site that is used as a rest room and storage area for the hand car wash staff. There is also a portable toilet

³ At my site visit I saw 7 people working in the hand car wash area and 2 people working in the shop.

building to the rear of the automatic car wash. The storage/rest room building appears on site from April 2015 as it does not appear to be there at the earlier image dated July 2014.

24. There is also now a physical separation on site as anyone wishing to pay for a car wash does so outside of the shop. Customers using the car wash also have a delineated area in which to wait/queue, which is now demarcated by yellow markings on the ground. This area was probably used to wait when the automatic car wash was in operation but it was not delineated as such. This is because the MOT service station to the rear of the site has a right of access across the petrol filling station forecourt that has to be kept clear at all times.
25. There is also a further physical change to the car wash activity area. It is no longer confined to the space occupied by the automatic car wash building and the area east of the shop but has spilled out to the space in front of part of the shop. Cars being washed by hand enter the old car wash building and are shampooed then jet washed/rinsed by hand held jet wash hoses, fitted inside the old car wash building. As the cars emerge, they are then polished and/or vacuumed in the space between the portable building and the old car wash building and adjacent to the shop. In addition, whereas the automatic car wash handled one car at a time, the new hand car wash service can process several cars at a time.
26. The operation of the hand car wash was first brought to the attention of the Council in August 2020. Photographs taken at that time show cars queuing for the car wash within the site and out along the main road, which is classified as the A1013. The appellant submits that this was a one off as the first national lockdown had just ended but photographs taken later in the year also show cars queuing in a long line and blocking the entrance to the MOT service station.
27. For a material change of use to occur there needs to be some significant difference in the character of the activities from what has gone on previously. I consider that there is now a significant difference in the character of the use of the service station following the subletting of the car wash activity. I find that the introduction of a hand car wash operation has resulted in a new physical and functional separation of the uses on site, albeit still within one planning unit.
28. Formerly, car washing took place in the automatic car wash building or the jet wash area to the east of the shop. Now the use has expanded to the area in front of the shop. Formerly, customers paid for a car wash in the shop but now they pay separate staff who operate from a new building on site and make use of a new separate toilet. In addition, the car washing use has intensified to such an extent that it employs more people than the petrol service station and, at times, results in long queues of cars that not only block the entrance to the MOT Service Station, but also the main road. It has also resulted in more advertising displayed on site. Having regard to the totality of these changes, this is a distinctive change in the character of the use and is so significant as to result in a complaint to the Council.
29. For these reasons I consider that there has been a material change of use of the site amounting to development. This is from a main use with ancillary elements to a new mixed use comprising two main elements, of which one has ancillary parts. As such, the appeal on ground (b) fails as the alleged breach of

planning control has occurred as a matter of fact. There has also been a breach of planning control in that development has occurred within the meaning of section 55 of the Town and Country Planning Act 1990 (the 1990 Act). Planning permission is required for the development as set out in section 57(1) of the 1990 Act but no planning application has been made or granted and the development is not permitted by any development order. The appeal therefore fails on ground (c).

Ground (d)

30. This ground of appeal is that at the date when the notice was issued, no enforcement action could be taken. The burden of proof in an appeal on this ground lies with the appellant. As such, the appellant needs to show, on the balance of probabilities, that the alleged use, namely the new mixed use, began more than ten years before the notice was issued. In addition, that the use has continued such that at any time during the ten year period the Council could have taken enforcement action against the use. The relevant date is the 12 April 2011.
31. The appellant's case is that there has been a car wash use on site for over 50 years in line with a planning permission granted in 1970. There have been no substantial modifications to that use other than switching from automatic to hand washing, which he submits is not development.
32. From the appellant's description of the use of the site since his involvement in 1997 it appears that the new mixed use began at some point after or towards the end of 2012. This is because he states that it was in the "latter" part of 2012 that he took on a commission operator for petrol sales and the shop and "subsequently" he made a similar arrangement for car washing. This is after the relevant date. Furthermore, I find that the new mixed use may not have begun until after July 2014 as the aerial image from that time does not show the portable building sited to the east of the shop, which is used as the base for the hand car washing operation.
33. The appellant has therefore failed to show, on the balance of probabilities, with evidence that is sufficiently precise and unambiguous, that the new mixed use began before the relevant date. Furthermore, he has failed to show that the new mixed use has continued without material interruption, such that at any time during the ten year period the Council could have taken enforcement action against the use. The appellant's own evidence does not need to be corroborated by independent evidence to be accepted but the appellant's evidence appears to be inconsistent with the Council's evidence. The appeal on ground (d) therefore fails.

Ground (f)

34. The appeal on ground (f) is that the requirements of the notice exceed what is necessary to achieve its purpose. The purposes of an enforcement notice are set out in section 173 of the 1990 Act and are to remedy the breach of planning control (s173(4)(a)) or to remedy any injury to amenity (s173(4)(b)). In this case the notice requires that the hand car wash use should cease and that equipment and materials associated with the use should be removed from the site. I therefore consider that the purpose of the notice is to remedy the breach of planning control.

35. In appealing on ground (f) the onus is on the appellant to specify lesser steps which in his view would overcome the objections to the development. The appellant states that he is prepared to submit documents such as risk assessments or any other document requested by the Council and that these would be sufficient to overcome the Council's concerns.
36. The submission of such documents would not overcome the breach of planning control. This is because the breach of planning control is the operation of the hand car wash use as part of a new mixed use on site. The submission of documents would not undo that initial action and would not address all of the harm caused by the development set out in the reasons for issuing the notice. I therefore find that the steps required by the notice do not exceed what is necessary to remedy the harm caused and the appeal on ground (f) fails.
37. However, it is necessary to vary the wording of the requirements, in addition to those already discussed regarding the phrase "including valet use", as there is an error in paragraph 5, step iii. The word "of" within the first line is not necessary and appears to be a mistake. I shall direct that it be deleted.

Conclusion

38. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and variations.

D Fleming

INSPECTOR