



Appeal Decision

Inquiry held on 8 March and 12 April 2022

Site visit made on 7 March 2022

by Elizabeth Pleasant BSc (Hons), DipTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 May 2022

Appeal Ref: APP/T5150/C/21/3278357

Land at 16 Orchard Close, Wembley, HA0 1TZ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Saiyed Hanif against an enforcement notice issued by London Borough of Brent.
 - The notice was issued on 3 June 2021.
 - The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of the premises from residential to a mixed use as residential, car repairs and the storage of broken vehicles ("the unauthorised change of use"), and; Without planning permission, the demolition of the front boundary wall, the formation of an access onto a highway and the creation of a parking area to the front of the premises ("the unauthorised development").
 - The requirements of the notice are:
 - STEP 1 Cease the use of the premises for car repairs and the storage of broken vehicles.
 - STEP 2 Remove all items, parts, vehicles and equipment associated with car repairs and the storage of broken vehicles.
 - STEP 3 Remove the parking area to the front of the premises by ensuring the surface is removed, dig/rip the land to ensure the presence of top soil and plant shrubs or lay turf on that soil, ensuring that the whole of the front of the premises consists of shrubs and turf with the exception of the provision of the wall as set out in Step 4 below and the provision of an 800mm wide footpath leading straight from the front gate to the front door of the house.
 - STEP 4 Block up the access to the highway and restore the property back to the condition before the unauthorised development took place by erecting a 800mm high brick front boundary wall and pedestrian gate along the boundary of the premises with the pavement to match that previously installed at the premises.
 - The period for compliance with the requirements is 1 month.
 - The appeal is proceeding on the grounds set out in section 174(2) (b) and (d) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that:

- The enforcement notice be corrected in Schedule 2 by the deletion of the wording of the alleged breach of planning control and substitution with, "Without planning permission, the material change of use of the premises from residential to a mixed use as residential and the storage of broken vehicles".

- The enforcement notice be corrected in Schedule 4 by the deletion of all the STEPS and substitution with:

STEP 1 Cease the use of the premises for the storage of broken vehicles.

STEP 2 Remove all items, parts, vehicles and equipment associated with the storage of broken cars.
2. Subject to the corrections above, the appeal is dismissed and the enforcement notice upheld.

Applications for costs

3. At the Inquiry an application for costs was made by the Council against Mr Saiyed Hanif. That application is the subject of a separate decision.

Preliminary Matters

4. Evidence at the Inquiry was taken under solemn affirmation.
5. The appeal was initially made on ground (d). However, the Appellant's Witness Statement¹ stated that cars had never been repaired in the front garden of No 16 Orchard Close. This point is more relevant to a ground (b), that those matters alleged in the notice have not occurred. Pre-inquiry Note 2 set out those matters and the Appellant confirmed at the Inquiry that his appeal should include a ground (b). The Council confirmed that there would be no prejudice to them if I were to determine the appeal on grounds (b) and (d), and I have determined the appeal on that basis.
6. I carried out an unaccompanied site visit on 7 March 2022 prior to the first day of the Inquiry. I was able to view the site frontage from the street where I could see that the front wall of the property had been removed and two cars covered in tarpaulins were situated within the dwelling's forecourt garden and overhanging the pavement. I was not able to view the rear of the premises where a garage is situated. The Appellant was unwilling to facilitate an accompanied site visit following the closure of the Inquiry, and advised that access to the garage was not possible without scaling a secure mesh fence which has been constructed to block the only means of access to it. An accompanied site visit was not therefore carried out. However, given the evidence I heard at the Inquiry, including evidence submitted as part of the appeal process, and from what I was able to see on my unaccompanied site visit, I am satisfied that I have sufficient evidence before me to make my decision.
7. The Appellant is clearly aggrieved that the Council issued enforcement notices both in respect of the appeal premises (this appeal case) and a notice served in February 2021 relating to the alley adjacent to No 17 Orchard Close. He accused the Council of persecution and a violation of the Human Rights Act, 1998 both in his Witness Statement and at the Inquiry. He stated that he did not want a public inquiry and that the appointed Inspector has no impartiality in these proceedings.
8. The Inspector's key guiding principles are Openness, Fairness and Impartiality. The Human Rights Act, 1998 enshrines most of the fundamental rights and

¹ Witness Statement, dated 20 February 2022.

freedoms in the European Convention on Human Rights (ECHR). Article 6.1 of the ECHR provides that *'in determination of his civil rights and obligations, or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.'* It is established case law that the planning system as a whole, including the right to judicial review, complies with the Article 6 requirement for a fair hearing before an independent and impartial tribunal.

9. Section 319A of the Town and Country Planning Act, 1990 (the Act) gives the Secretary of State the duty to determine the procedure for dealing with the appeal. In this case, because there are legal grounds where factual evidence needed to be given on oath, it was determined that an Inquiry was necessary.

Appeal on ground (b)

10. The issue is whether as a matter of fact car repairs were been carried out on the Land and broken vehicles stored on it.
11. The appeal site comprises a mid-terraced two-storey dwelling situated within a predominantly residential cul-de-sac. It has a small forecourt garden and a modest rear garden with a detached garage. Access to the garage is via an alley which runs between 17 Orchard Close and the rear gardens of properties on Mount Pleasant.
12. There is no dispute between the main parties that the garage has been on the Land since the early 1980's. The Appellant told the Inquiry that he stores a car in the garage and some tools. Access to the garage has been restricted by cars stored in the alley for a significant number of years and consequently, the car stored within the garage has been there for some time. I have not been provided with any evidence from the Council or third parties that the garage has been used for anything other than a use ancillary to the residential use of 16 Orchard Close.
13. Between 2015 and 2016 the front garden wall to No 16 was removed. Subsequently two cars have been stationed within the front garden. Although the Appellant believes those cars to be parked on the Land, he confirmed at the Inquiry that the cars were not driven onto the Land, and since being moved there, have remained in situ, unutilised. Photographs included within Appendix 9 of the Council's Proof of Evidence indicate the cars in a similar position in February 2018, September/October 2018, June 2019, December 2020 and February 2021, which is the period leading up to the service of the notice. Storage occurs when something is put away for a period of time because its use is not contemplated in the short term. I therefore conclude that the cars on the Land are being stored.
14. The notice alleges a material change of use from residential to a mixed use as residential, car repairs and the storage of broken vehicles. The Appellant contends that he has never carried out car repairs on the Land.
15. The Council accept that until 2015/2016 the appeal premises was used as a dwellinghouse and that any car repairs and storage of broken vehicles was either non-existent or it was ancillary to the lawful dwellinghouse use.² However, it contends that since the demolition of the front boundary wall, the front garden has been used for the storage of broken vehicles and for car

² Council's Proof of Evidence, paragraphs 3.1 – 3.3.

repairs which go beyond anything which might be considered to be ancillary to the use of the dwellinghouse.

16. As set out in the paragraphs above, the front garden of No 16 is being utilised for the storage of broken vehicles. However, I have not been provided with any substantive evidence that car repairs have been undertaken on the Land. The Appellant accepted at the Inquiry that he has undertaken repairs to his cars on Orchard Close, but not on Land at No 16. Photographs included with third party representations, and those presented by the Council in their evidence, do not support the allegation of car repairs being undertaken on the Land. There is a photograph of the Appellant welding a gate on the pavement outside of No 16, and of him working on a car situated on a trailer in the road, however in the main the photographs show the broken vehicles being stored. Indeed, the Council accepted at the Inquiry that they have not witnessed the Appellant undertaking car repairs on the Land.
17. It is the Council's view that Mr Hanif worked on cars stored on the Land, within the adjacent alley and on Orchard Close, and that he uses tools and electricity stored at No 16 to undertake those repairs. However, there is no substantive evidence that car repairs have been undertaken on the appeal site, and certainly nothing to demonstrate a level of repairs which is anything more than ancillary to the residential use. There are no statutory declarations from third parties, and no evidence presented to the Inquiry to show when and how frequently car repairs have taken place on the Land. Moreover, given that most of the former garden frontage is now taken up with vehicle storage, it is difficult to see how such repairs could be undertaken in such a confined space.
18. In a case such as this where there are legal grounds of appeal, the onus is on the Appellant to prove their case and the test is the balance of probability. The Appellant argued at the Inquiry that it is difficult to provide evidence of something you haven't done. From the evidence before me, I have no doubt that the Appellant has carried out some repairs to his cars on Orchard Close, and probably on cars previously stored within the alley. However, no documented evidence of car repairs taking place on Land at No 16 has been provided. In the absence of that evidence, I agree with the Appellant that the allegation is difficult to refute. Therefore, in the absence of any substantive evidence that would demonstrate that car repairs have been carried out on the Land at 16 Orchard Close, on the balance of probability, I conclude that car repairs have not taken place. I shall therefore remove the reference to car repairs from the alleged breach of planning control, and to that extent the appeal on ground (b) succeeds.

Appeal on ground (d)

19. In relation to a breach of planning control consisting of operational development, no enforcement action may be taken after the end of a period of four years beginning with the date on which the operations were substantially complete (s173B(1)). In the case of a breach of planning control consisting of a material change of use of land to a mixed use, the relevant time period is ten years beginning with the date of the breach (s171B (3)).
20. At the beginning of the Inquiry the Council confirmed that they no longer dispute that the alleged demolition of the front boundary wall, formation of an access onto a highway and the creation of a parking area to the front of the premises were substantially complete more than four years before the notice

was served. From the evidence before me I see no reason to disagree. It was agreed at the Inquiry that I should therefore remove that allegation from Schedule 2 of the enforcement notice, and as the works undertaken are now lawful, I should delete Steps 3 and 4 of the requirements. Therefore, the appeal succeeds on ground (d) to the extent that the notice alleges unauthorised operational development.

21. However, in relation to the allegation as corrected, i.e. the material change of use of the premises from residential to a mixed use as residential and storage of broken cars, the Council's evidence and images from street view show that in so far as the storage use extended to the use of the front garden of No 16, that use did not take place until after June 2015³. Whilst I appreciate that it is likely that the Appellant has stored a car within his garage for a longer period of time, the Council made it clear that prior to the storage extending to the use of the front garden they were satisfied that any storage use on the Land had been ancillary to the residential use of No.16. The Appellant has not provided any substantive evidence to demonstrate that the alleged mixed use has been continuing on the Land for at least 10years.
22. The balance of the evidence demonstrates that there was a significant increase in the number of broken cars stored on the Land from 2015/16. Taking into account this and the absence of any appeal on ground (c), on the balance of probability, a material change in the character of the use of the Land identified in the notice, took place after June 2015. On that timescale the mixed use cannot be lawful.
23. In conclusion, on the balance of probability, the material change of use took place after 2015. Therefore, the mixed use has not become lawful and has not gained immunity from enforcement action through the passage of time. The appeal on ground (d), to the extent that it relates to the unauthorised material change of use, does not succeed.

Conclusion

24. For the reasons given above, and having taken into account all other matters raised, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections.

Elizabeth Pleasant

INSPECTOR

³ Council's Proof of Evidence, Appendix 8.

APPEARANCES

FOR THE APPELLANT

Mr Saiyed Hanif

The Appellant

Tahera Choudry

Supporting the Appellant

FOR THE LOCAL PLANNING AUTHORITY

Mr Nigel Wicks CTP

Director of Enforcement Services Limited

DOCUMENTS submitted at the Inquiry

- 1 Opening Statement on behalf of the Council
- 2 Photographs taken on behalf of the Council, dated 4 September 2021.
- 3 Costs Application on behalf of the Council.