



Appeal Decisions

Site visit made on 15 March 2022

by M Madge DIPTP MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 May 2022

Appeal A Ref: APP/T5150/C/21/3270289 and

Appeal B Ref: APP/T5150/C/21/3270290

209 Watford Road, HARROW HA1 3UA

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended. Appeal A is made by Dr Ajay Patel and Appeal B is made by Ms Sheena Mediratta against an enforcement notice issued by the Council for the London Borough of Brent.
 - The notice, numbered E/16/0721, was issued on 26 January 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the rear of the premises to a construction storage yard.
 - The requirements of the notice are:
 - STEP 1 Permanently cease the use of the premises as a construction storage yard.
 - STEP 2 Remove all items, materials and equipment associated with the unauthorised use, including the shipping containers, all building materials, plastic pipes, traffic cones and temporary road signs, from the premises.
 - The period for compliance with the requirements is 3 months.
 - The appeals are proceeding on the grounds set out in section 174(2)(c) and (d) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeals are dismissed, and the enforcement notice is upheld.

Preliminary matters

2. Appeals on legal grounds such as grounds (c) and (d) are determined on the facts presented. References to noise and traffic generation are matters to be considered in relation to the planning merits of the case. As an appeal on ground (a) has not been lodged, these matters are not before me for consideration.
3. At the time of my site visit, the land was occupied by 2 storage containers, one of which appeared to have been used for office, welfare, and storage purposes. Various construction materials along with temporary fencing, scaffolding and gas cylinders were being stored outside. A high fence defines the boundary between the premises, 211 Watford Road and the vehicular access. A pedestrian access gate in the fencing provides access into the land from the adjacent vehicular access.

Appeals on ground (c)

4. For the appeals on this ground to succeed the appellants need to show that the use as a construction storage yard does not constitute a breach of planning control. The onus of proof is on the appellants and the relevant test is the balance of probability.

5. The appellants claim that the yard has been '*used for general industrial purposes B1 (previously B8) since the early 1980s*' and that it has remained in the same class throughout. This argument falls to be considered under ground (b), that the matters alleged had not occurred. Given the similarities between ground (b) and ground (c), and the fact that the Council has had an opportunity to comment, no injustice would arise from my consideration of this argument. The appellants go on to claim that as the site measures less than 500 square metres the use is a permitted development under s55(2) of the Town and Country Planning Act 1990 (as amended) ("the Act").
6. The courts have held that the appellant's own evidence does not need to be corroborated by 'independent' evidence to be accepted. The appellant's evidence does however have to be precise and unambiguous.
7. In this case, I have nothing beyond the appellants' assertion that the '*B1 (previously B8)*' use has occurred since the early 1980s or that the construction storage yard use falls within use Class '*B1¹ (previously B8)*'. The appellants offer no explanation as to what they mean by '*B1 (previously B8)*'. Having regard to recent amendments to the Town and Country Planning (Use Classes) Order 1987 as amended, several use Classes, including Class B1, were amalgamated into a new Class E. Use Class B1 previously related to light industrial use. Class B8 has always related to storage and distribution uses. Class B1 was not previously Class B8. Furthermore, no information is provided to show that planning permission was granted for use of the land for Classes B1 or B8 purposes.
8. S55(2) of the Act provides a list of operations and uses of land that shall not be taken for the purposes of the Act to involve development of the land. None of the operations or uses listed require the site to be less than 500 square metres in area.
9. I have not been directed to Part 3, Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 as amended ('the GPDO'). However, the GPDO confirms in Class I that where the floor area of a building exceeds 500 square metres, a change of use from Class B2 to Class B8 is not permitted. This limitation coincides with the floor area identified by the appellants. Class I is not applicable here as the land affected is not a building and the appellants do not claim that the original use fell in use Class B2. Therefore, the evidence provided by the appellants fails to clearly set out how the matters alleged do not constitute a breach of planning control.
10. For the reasons given above, I find the appellants' evidence to be imprecise and ambiguous. The appellants have therefore failed to show, on the balance of probability, that the change of use to a construction storage yard was not material or that it constitutes permitted development. The matter alleged has occurred as a matter of fact and it constitutes a breach of planning control.
11. The appeals on ground (b) and (c) fail.

Appeals on ground (d)

12. For an appeal to succeed on this ground the appellants needs to show that the use as a commercial storage yard has taken place continuously for 10 years or

¹ Class B1 has been amalgamated with other classes into Class E of the Town and Country Planning (Use Classes) Order 1987 as amended from July 2020

- more. The material date is 26 January 2011, and any 10-year period is relevant.
13. Other than their written submission that '*the yard has been used for the storage of materials since at least the mid-1990s and possibly longer than that*', the appellants have not provided any evidence to show when the use began or how the land has been used continuously as a commercial storage yard for 10 years or more.
 14. The occupier of adjacent commercial premises at 209 and 211 Watford Road states that '*the yard was always used for the current purposes since before [they] moved in in 2005*'. They also state '*[They] can see that the yard is used to store building materials*'. The occupant of an adjacent flat has also written in support of the use, although their submission provides no information relating to dates or the length of time that the use as a construction storage yard has been operated. Neither submission is a sworn declaration, and I give these submissions little weight.
 15. The Council has provided a series of Google Street View and Google Earth images. These only provide a snapshot in time as to what was occurring on the land at specific dates. However, Google Street View images dated August 2008 and October 2012 show the land devoid of boundary fence, gates and storage containers. The Google Street View image dated July 2014 shows the fencing and gate has been erected and the presence of at least one storage container. It would be reasonable to assume that the fencing and storage container facilitated the use as a construction storage yard, and that these facilities were provided sometime between October 2012 and July 2014. The Google Earth images show the premises occupied by several vehicles in June 2010, vacant in July 2013 and occupied by the 2 storage containers and various other things, which could be construction materials, and a vehicle in June 2015. Even taking the earliest date of October 2012, this is some considerable time after the mid-1990s as claimed by the appellants, 2005 as suggested by the neighbour, and the material date of 26 January 2011.
 16. The appellants submission on ground (d) lacks substance and is imprecise. While the neighbour's supporting submission corroborates the appellants version of events to a limited degree, the Google images show the premises not to be in use as a construction storage yard on various dates, including times when continuous use may still have needed to be demonstrated. The appellants have not therefore shown, on the balance of probability that the use as a construction storage yard began before the material date or that it has been used continuously for 10 years or more.
 17. For the reasons given above, the appeal on ground (d) fails.

M Madge

INSPECTOR