

Appeal Decision

Site visit made on 17 May 2022

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH JP

an Inspector appointed by the Secretary of State

Decision date: 20th May 2022

Appeal Ref: APP/B5480/C/20/3262625

14A Hog Hill Road, Romford RM5 2DH shown edged in black on the plan attached to the notice and registered under Land Registry Title Number EGL279326

- 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 William Charles Green against an enforcement notice issued by the Council of the London Borough of Havering.
 - The enforcement notice, numbered ENF/509/19, was issued on 9 October 2020.
 - The breach of planning control as alleged in the notice is without planning permission, the unauthorised change of use of the land to vehicle storage and vehicle repairs business.
 - The requirements of the notice are to:
 1. Cease the use of the land for the storage of vehicles and as a vehicle repairs business; AND
 2. Permanently remove all vehicles, vehicle parts and tyres from the land; AND
 3. Remove all rubble and debris accumulated when taking steps (1) to (2) above.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (b) (d) (g) of the Town and Country Planning Act 1990 as amended (the Act).
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Decision

1. The appeal is dismissed and the enforcement notice is upheld.

Procedural Matter – “Hidden grounds”

2. Although the appeal was started on grounds (b) (d) and (g), it is clear from the appellant’s submissions that arguments are also made on grounds (c) and (e). I have a duty to be alert to any such “hidden grounds” of appeal and to deal with them, which I have accordingly done so within this Decision. Since these arguments were transparent to the Council at statement stage, I am satisfied that it has had a fair opportunity to respond through the submission of final comments.

Ground (e)

3. It appears from the appellant's statement of case that he alleges that copies of the notice were not served in accordance with s172 of the Act.
4. In particular it is claimed that copies of the notice were not served until the effective date of the notice (9 November 2020), 1 month after the date of issue (9 October 2020). Indeed, to substantiate this claim, the appellant has submitted photographs of covering letters under which copies of the notice were served which appear to be dated 9 November 2020.

5. I have considered this point carefully, but find that it is undermined by the appellant's own evidence. The appeal form was submitted on 5 November 2020, along with a copy of the enforcement notice. Clearly, the appellant cannot have received it on 9 November 2020. Rather, I find it likely that the dates of the covering letters were typographical errors and were intended to dated 9 October 2020; the date the notice was issued.
6. I therefore find that the appellant has not satisfied me on the balance of probabilities that copies of the notice was not served in accordance with the Act. In any event, even if the requirements of the statute were not met, the appellant has not been prejudiced since he has been able to make an appeal. Accordingly, the appeal does not succeed under ground (e).

Ground (b)

7. For an appeal to succeed on this ground, the burden of proof is on the appellant to satisfy me on the balance of probabilities that matters stated in the notice have not occurred.
8. The notice alleges that the use of the land is as a vehicle storage and vehicle repairs business. There is nothing substantive in the appellant's submissions that makes the case that the land hasn't been used commercially for vehicle storage, and the appellant has submitted a statutory declaration solemnly stating that vehicles are mechanically repaired on the site. Indeed, the appellant has referred to 'overwhelming' evidence that is the case and has submitted various documents in support (including receipts for parts and a letter from his accountant).
9. Further, the site has long-standing planning permission (personal to the appellant)¹ for use for the display and sale of motor vehicles with ancillary offices. Such a use might be reasonably described as a vehicle, or car, showroom. The appeal submissions of the appellant do not satisfactorily demonstrate that, at the time the notice was issued, this (or any other use) of the site was in occurrence as opposed to the allegation of use made in the notice by the Council.
10. While the accountant's letter refers to the resale of vehicles following repair – albeit over a long period (being the appellant's accountant since 2006) – this does not demonstrate use of the site for the *display and sale* of vehicles at the time the notice was issued. Similarly, while the appellant's statutory declaration says that vehicles are sold to general public from the site, the Council's submitted photographs from 2019/2020 persuade me that at the time they were taken it cannot be reasonably said that vehicles were on display for sale. In my experience, cars on display for sale are commonly labelled with a sales price and arranged in a fashion to encourage and facilitate viewing (such as in rows and/or with reasonable spaces around the vehicles so that customers can circulate around and readily view the interiors and exteriors). While the Street View images of 2008 and 2012 demonstrate such characterising features of the permitted use (albeit outside the notice appeal site), the later photographs conversely show un-priced vehicles either clearly undergoing repair or else largely positioned in rather haphazard and/or relatively tightly parked formations against what would be expected in a sales display context.

¹ P0029.95, with previous related applications

11. Accordingly, the appellant has not satisfied me on the balance of probabilities that the matters stated in the notice have not occurred as a matter of fact.
12. I note that the appellant says that there is no unauthorised vehicle breaking at the site, and that there is no unauthorised residential use of premises at first floor level. However, neither of these matters form part of the notice allegation in any respect.
13. The ground (b) appeal therefore fails.

Ground (c)

14. For an appeal to succeed under this ground, the burden of proof is on the appellant to satisfy me on the balance of probabilities that the matters stated in the notice do not constitute a breach of planning control.
15. In essence, it is said by the appellant that the breach of planning control alleged by the matters in the notice has not occurred as it is authorised by the aforementioned planning permissions pertaining to the site.
16. However, as discussed under ground (b), consent is for use for the display and sale of motor vehicles with ancillary offices. Use of the site as alleged, for a vehicle storage and vehicle repairs business, is materially different from approved both in terms of the overall character of the activity and general implications for the area. For instance, there is less likely to be off-site impacts from repairs which are carried out ancillary to vehicle display and sales (which would be subsidiary to that primary use).
17. Accordingly, the matters stated in the notice are unauthorised and I am not satisfied on the balance of probabilities that a breach of planning control has not occurred.
18. The ground (c) appeal therefore fails.

Ground (d)

19. For an appeal to succeed under this ground, the burden of proof is on the appellant to satisfy me on the balance of probabilities that at the time the notice was issued it was not possible for the Council to take enforcement action in respect to the alleged breach of planning control.
20. S171B(3) of the Act provides in these circumstances that no enforcement action may be taken after the end of the period of 10 years beginning with the breach. The notice was issued on 9 October 2020. In essence therefore, it is for the appellant to demonstrate to the required level of proof that the unauthorised material change of use took place before 9 October 2010 (the relevant date) and was continuous throughout the 10-year immunity period.
21. The appellant has provided a range of documents (such as receipts for parts) dated from 2009 to evidence that repairs were undertaken, and also highlights in his statutory declaration and by a photograph that a car ramp in the corner of the site had been there for more than 21 years (said to be used on a daily basis). He also highlights that he is a Certified Mechanic and Technician, attaching certificates of his qualifications, and says that he has been in the motor vehicle industry since June 1975.

22. I accept all of this evidence as demonstration that repairs were undertaken by the appellant at the appeal site since at least 2009. However, the evidence does not demonstrate satisfactorily that repairs undertaken at the site were pursuant to a primary use for vehicle repairs (and storage) as opposed to those which were ancillary and therefore subsidiary to a primary vehicle display and sales use. For instance, the number of receipts for parts for the immunity period is lower than could reasonably be expected for a site continuously used throughout that period for a primary use as a vehicle repair (and storage) business.
23. Accordingly, I am not satisfied on the balance of probabilities that it was too late for the Council to take enforcement action on the date the notice was issued. The appeal on ground (d) therefore fails.

Ground (g)

24. For an appeal to succeed under this ground, I must be satisfied that the compliance period of the notice falls short of what is reasonable.
25. The appellant has made a very limited substantive case why he considers 3 months to be unreasonable, and taking all into account I consider that it is a sufficient and reasonable time within which to complete all requirements of the notice. The appeal on ground (g) therefore fails.

Conclusion

26. For the reasons given above I consider that the appeal should not succeed, and I uphold the enforcement notice.

Andrew Walker

INSPECTOR