



Appeal Decision

Site visit made on 7 June 2022

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 14 June 2022

Appeal Ref: APP/B5480/C/20/3264076

99 Victoria Road, Romford RM1 2LX

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Adil Haziri against an enforcement notice issued by the Council of the London Borough of Havering.
 - The notice, numbered ENF/388/18, was issued on 30 October 2020.
 - The breach of planning control as alleged in the notice is without planning permission the material change of use of the land to a vehicle washing and valeting centre (sui generis use).
 - The requirements of the notice are to:
 - (i) Cease using the site as a vehicle washing and valeting centre; and
 - (ii) Remove all equipment, including fixed and hand held equipment that facilitates the unauthorised use; and
 - (iii) All materials and debris associated with steps (i) and (ii) above, shall be totally removed from the site.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the ground set out in section 174(2)(d) of the Town and Country Planning Act 1990 as amended.
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Decision

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

Preliminary Matter

2. The Council referred to the lack of any sworn affidavits in its statement. Along with his final comments, the appellant submitted a affidavit from a customer of the business which has been counter signed by a solicitor and two statements, one from a customer and one from the freeholder of the site. This amounted to late evidence. However, the Council has been given the opportunity to comment on these documents and has done so. Therefore, no injustice would arise were I to consider the late evidence as part of my determination of the appeal.

Ground (d)

3. An appeal on ground (d) is on the basis that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. This is a legal ground of appeal, and the onus of proof lies with the appellant. The evidence must be sufficiently precise and unambiguous, and the standard of proof is the balance of probabilities.
4. This ground of appeal accepts that at some stage there has been a breach of planning control, but that it is immune from enforcement action, having subsisted for a ten-year period in the case of change of use.

5. The breach of planning control in this case is the use of land for a vehicle washing and valeting centre. It is this use which the appellant must demonstrate has been taking place on the site continuously on the site for a period of ten years prior to the notice being issued.
6. In order to achieve success under ground (d) the appellant needs to show that the use as described in the notice has been carried on without interruption for a period of ten years before 30 October 2020.
7. The appellant's case is that the premises are in use for washing cars. He says that the car wash use has continued to operate from the site since 2005. He has provided evidence which he considers establishes that the car wash use has been carried on continuously for ten years.
8. Both parties refer to a planning application which was submitted in 2009 for a temporary change of use to a car washing and valeting centre (Council Ref. P0774.09). The applicant in that case does not appear to be the same person as the appellant. Planning permission was granted for the retention of a car valeting centre on 8 October 2009 for a limited period expiring on 31 October 2010 (the 2009 consent).
9. In response to a question on the application form for the 2009 consent the applicant said that the use had already started at the time when the application was made and had commenced in March 2006. On this basis the use described as a car washing and valeting centre had already been carried out between March 2006 and 29 May 2009 when the application was made, according to the date stamp.
10. This does not undermine the appellant's argument that the site was used as a car wash since 2005. However, it does provide evidence of a mixed car wash and car valeting use on the site for part of the time period between when the appellant says the use commenced and the date when the notice was served, 30 October 2020.
11. The use of the site during the March 2006 to May 2009 time period as a car washing and valeting centre does not necessarily preclude the appellant from demonstrating use as a car wash only for a period of ten years running up to 30 October 2020 which is central to his case. However, in order to demonstrate that the premises had been used for car washing only, for a period of ten years, the car valeting element of the mixed use must have ceased by 30 October 2010.
12. The Council provided a screen shot of the premises but there is no date on this document. It includes a banner sign reading 'hand car wash & car valet centre'. The appellant has also provided a Google streetview image of the site, again this is undated. A different sign is shown in this image, but it also advertises both the car wash and valeting centre.
13. I observed during my site visit that a similar sign to that shown on the appellant's image is currently displayed at the premises but the section relating to car valeting has been covered with a 'special offer' sign. Whilst not conclusive of a mixed car wash and car valeting use, the evidence with respect to signage raises a degree of ambiguity about the services which are available at the premises and whether the valeting use ceased in 2010.

14. The invoices for rent which the appellant has submitted relate to approximately 3 month periods in years from 2006 to 2016. They are addressed to 'The Car Wash, 99 Victoria Road'. In each case the same three month period is referred to, thus the invoices only provide a partial picture of each year. The appellant says that other records have been lost and he argues that it would not be sustainable for the business to only be carried out 3 months of the year. Nevertheless, this information is incomplete and can only carry limited weight.
15. The appellant has provided a copy of details of payments made to Essex and Suffolk Water for the period October 2006 to March 2014. This document does not differentiate between water usage by the car wash and the shop and flats at the same address, but it does reference the car wash.
16. Water bills are provided for the period April 2014 to September 2015. The property address is given as 'workshop and prems, 99/99a Victoria Road'. Therefore, these bills do not provide evidence that a car wash was operating from the site at that time.
17. Water bills for the periods March 2017 to 2018, September 2018 to October 2018 and September 2019 to September 2020 refer to a meter for the car wash, shop and flat. Thus, providing some evidence for a car wash being on the site at those times.
18. Drawing together all of the information provided in terms of payments for water usage at the site, there is some evidence of the car washing activities taking place between 2006 and 2020. However, there is a period of time between April 2014 and September 2015 when the evidence is not precise in this regard.
19. I also noted at my site visit that there were items inside the building associated with car washing, including water tanks and equipment. But there were also two washing machines, a vacuum cleaner and products used for 'cockpit' cleaning which it is reasonable to conclude are for use for the interior of vehicles. Although providing only a 'snapshot' in time, these observations also increase the ambiguity about whether the premises have been used only as a car wash or as both a car wash and valeting centre.
20. The appellant has submitted a letter from the owners of the site which confirms that in August 2008 they entered into a lease agreement allowing use as a car wash. The owners say that they do not recall any car valeting taking place and that the temporary planning permission (the 2009 consent) was not implemented. This statement is consistent with the appellant's argument that the 2009 consent was not implemented. However, it does not align with the use of the site as a car washing and valeting centre between March 2006 and May 2009 as stated on the planning application form.
21. A signed statement by a customer confirms that she has had her car washed fortnightly since living in the area from 2005. However, the statement does not make any reference to the presence or absence of any car valeting activities, and it does not establish whether the site was in use as a car washing and valeting centre or a car wash only.
22. Both the letter from the freeholder and the statement by the customer have limited value as they do not have the weight of a statutory declaration (SD) which provides sanctions for false declarations.

23. An affidavit by another customer has been provided which states that he has used the car wash at least 12 times per year since 2008 and that he does not recall having seen any car valeting services on offer. The latter statement is again inconsistent with the evidence from the planning application form that the site was in use for car washing and valeting between March 2006 and May 2009. This evidence is also contradicted by the Council's and appellant's evidence in terms of signage on site relating to valet services also being available.
24. The affidavit was signed in the presence of a solicitor but in the absence of the form of words contained in an SD again its weight is limited by the lack of any sanctions.
25. Drawing all of the evidence together it appears that since March 2006 the site has been used as both a car wash and for vehicle valeting, with the two uses fluctuating to the extent that at some times only the car washing activity was taking place. However, the evidence is incomplete in terms of the invoices for rent, imprecise and incomplete in respect of payments for water usage and ambiguous in regard to the contents of signage and the equipment available on the site. The statements from the site owners and customers attract limited weight and in any case are imprecise in terms of the references to the car valeting activities.
26. On the basis of the evidence, the appellant has not shown, on the balance of probabilities, that the breach of planning control as set out on the notice, being the use of land for a vehicle washing and valeting centre is immune from enforcement action. Nor has he shown that the car wash use only has been carried out continuously for a 10 year period.
27. Thus, even if it had been appropriate for me to amend the notice to relate to use for car washing only, the appeal under ground (d) would have failed on the basis of lack of evidence.
28. For the reasons given above, I conclude that the appeal under ground (d) should not succeed. I shall uphold the enforcement notice.

Sarah Dyer

Inspector