



Appeal Decision

Site visit made on 20 July 2022

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 August 2022

Appeal Ref: APP/W4705/C/22/3294774

Land at Ashley House, Ashley Lane, Shipley BD17 7DB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
 - The appeal is made by Mr Jamil Ashraf of Jmail Assets Limited against an enforcement notice issued by the City of Bradford Metropolitan District Council.
 - The notice was issued on 15 February 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the unauthorised use of land for storage, processing and transfer of waste tyres.
 - The requirements of the notice are to:
 - i. Cease the unauthorised use.
 - ii. Remove from the land all tyres and waste, equipment, plant and machinery brought onto the land in connection with the unauthorised use.
 - The period for compliance with the requirements is three calendar months.
 - The appeal is proceeding on the ground set out in section 174(2)(b) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice is varied by the addition of the following words after *use* in requirement (i) in section 5 of the enforcement notice: *of land for storage, processing and transfer of waste tyres*.
2. Subject to this variation, the appeal is dismissed and the enforcement notice is upheld.

Preliminary Matter

3. The postcode in the banner heading above is taken from the appellant's appeal form since none was given on the enforcement notice.

The Enforcement Notice

4. The requirements should flow logically from the allegation, accordingly, in the interests of clarity, I have varied requirement (i) as set out in my decision above. Since this neither enlarges nor reduces the scope of the requirements there is no injustice caused.

The appeal on ground (b)

5. An appeal on ground (b) is a claim that the matters stated in the enforcement notice (which may give rise to the alleged breach of planning control) have not occurred as a matter of fact. The burden of proof is on the appellant and the relevant test is the 'balance of probabilities.'

6. The enforcement notice relates to the building, Ashley House, and land to the front and rear. The appellant's case appears to relate only to the land to the rear of the building and is that all waste tyres had been removed at the time the notice was issued.
7. In any event, it makes no difference whether the breach had been stopped or not. The question is whether the breach had occurred by the date of issue of the enforcement notice. If the alleged use had occurred, an appeal on ground (b) cannot succeed simply on the basis that the use had ceased.
8. The appellant does not dispute that the land has been used for the storage, processing and transfer of waste tyres as specified in the notice. Consequently, whether the tyres had been removed and the use had ceased prior to the issue of the enforcement notice, as a matter of fact, the matters stated in the notice have occurred. The appeal on ground (b) must fail.

Other Matters

9. Whilst an exemption may have been registered with the Environment Agency, this is a separate regulatory regime and is not equivalent to a planning permission.

Conclusion

10. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation.

Felicity Thompson

INSPECTOR