



Appeal Decision

Site visit made on 23 August 2022

by Chris Preston BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 September 2022

Appeal Ref: APP/N5090/C/22/3297534

22 West Avenue, Finchley, London N3 1AX

- 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 Bilbinder Singh against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The enforcement notice, numbered ENF/1297/21, was issued on 21 March 2022.
 - The breach of planning control as alleged in the notice is: Without planning permission, the running of a car sales business from a dwellinghouse.
 - The requirements of the notice are to cease the running of a car sales business from a dwellinghouse.
 - The period for compliance with the requirements is one month after the notice takes effect.
 - The appeal is proceeding on grounds (b), (f) and (g) set out in section 174(2) 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 by:
 - The deletion of the words "the running of a car sales business from a dwellinghouse" immediately after the words "Without planning permission" in the description of the breach at section 3 and the substitution of the following words "the material change of use from use as a dwellinghouse to use as a dwellinghouse and a use for the running of a car sales business"; and
 - The deletion of the word "a" immediately prior to the word "dwellinghouse" in the requirement at section 5 and the substitution of the word "the"
2. Subject to these corrections the appeal is dismissed and the enforcement notice is upheld.

Procedural Matters

3. The alleged breach of planning control is described in the notice as "without planning permission, the running of a car sales business from a dwellinghouse". That description does not explicitly describe an act of development and would be clearer if it referred to a material change of use, which is the basis of the allegation. Moreover, there is no suggestion from the information presented that the residential use of the dwellinghouse has ceased and it appears to me that the description of the breach would be clearer if it referred to both elements of the use i.e. "the material change of use from use as a

dwellinghouse to use as a dwellinghouse and a use for the running of a car sales business”.

4. That change does not affect the nature of the arguments made in relation to the appeal and neither party will be prejudiced by my decision to correct the description of the breach which is intended to bring greater clarity to the notice.
5. The appellant indicated on the appeal form that he wished to appeal on grounds (b), (f) and (g). Having read his submissions, it appears that some of the arguments submitted are more closely related to an appeal on ground (c) which is that the use does not amount to a breach of planning control. I am mindful that the appellant is not represented by a professional agent and that determining which ground to appeal in enforcement cases is not always straightforward. In that context, I have assessed the arguments that appear to fall under that ground in my decision below. The Council has addressed the matter in its statement and no injustice will arise as a result of my consideration of arguments relating to ground (c).

Reasons

The Appeal on Ground (b)

6. An appeal on ground (b) is made on the basis that the matters alleged in the notice have not occurred. The onus rests on an appellant to demonstrate his case and I must assess whether the breach has occurred in light of the evidence presented, on the balance of probability. I note that the appellant indicates that he now has new premises for the business but I must consider whether the breach had occurred at the time the notice was served.
7. Significant evidence has been presented from the Council and other interested parties to suggest that activities relating to car sales have taken place from 22 West Avenue, including the parking of cars advertised for sale, maintenance of those cars and visits to the premises of those seeking to purchase cars. The Council has provided photographic images of cars parked at the premises, or immediately outside on the road, and cross referenced the number plates with vehicles advertised for sale on the “MB Cars London Ltd.” website. There is no dispute that the appellant is the company director of that business.
8. I recognise that the images represent a single snapshot in time but the fact that five “high end” cars were photographed at the premises and all five were for sale casts significant doubt on the appellant’s assertion that the cars were owned/used by family members or friends visiting the property. Whilst the dwelling may house a large family and associated friends and relatives may visit, the fact that so many cars were advertised for sale is indicative of business activity. In a review submitted to the website a customer also describes meeting the whole family when going to purchase a car. That would be unlikely at a showroom site and indicates that visits were taking place at the home address.
9. In response to the Planning Contravention Notice, the appellant stated that trade cars are not taxed or insured to be parked on the road. The cars advertised for sale and parked outside the home, as photographed by the Council, were not under trade plates which somewhat contradicts the response to the PCN. It is also contradicted by his later statement that his insurance

covers he and his family to drive private or trade cars for personal use. The inconsistency does dilute the weight I attach to the appellant's position. In any event, even if cars being advertised for sale were being used temporarily for personal use, the fact that they were for sale at the time is such that customers are likely to visit the premises to view the cars and that the cars will need to be maintained in a showroom ready condition, involving regular maintenance. All of that would entail more activity and more visits to the premises that would be the case of a private car not advertised for sale.

10. The evidence is supported by numerous letters from local residents and the Residents' Association who describe cars with MB Cars branding being parked, cleaned and repaired on the driveway/ road and customers visiting the premises. Images from the company's social media accounts depicting multiple customers collecting cars from the premises or nearby streets have also been provided. The scale and frequency of the activity described and identified appears to contradict the appellant's assertion that the cars parked at or around the property were only used by family members, friends or relatives.
11. In addition, West Avenue was shown as the address of the company on the MB Cars website and the Autotrader websites. The appellant maintains that the address given was an oversight on account of the fact that he needed to provide an address for the purposes of creating the website when establishing the business. However, as noted by the Council, that address was still being used on websites approximately five years after the company was established. It seems highly unlikely that the wrong address would have been provided on the websites for such a long period of time, given the fact that customers will need to know where to go to collect or inspect vehicles. Had the principal activity been from another address one would expect that to have been clearly indicated in online material at a much earlier stage.
12. Although the registered address is an accountant's office on Whittington Road, there is no indication that any car sales activity took place at that location. The appellant maintains that the company purchases cars and then stores them either at their bodyshop or an alternative storage location until sold. However, in contrast to the photographs and social media information which shows customers visiting and collecting cars from West Avenue, or the surrounding streets, no supporting evidence has been submitted by the appellant to show that car sales or customer visits take place at other locations.
13. The appellant does accept that customers will sometimes pick up cars from West Avenue "2 or 3 times a week" which somewhat contradicts his position that sales related activity does not take place from the premises. Given the high cost of the vehicles advertised for sale I find the suggestion that most customers are happy to inspect the vehicles via Facetime or other video messaging to be less than plausible.
14. There are other inconsistencies in the evidence presented by the appellant. He maintains that the business is operated on a part-time basis to provide funds to support his children in their studies. However, the company accounts for the year ending 31 December 2020 depict a significant turnover and indicate that four people were employed in the business.
15. In addition, in his final comments the appellant appears to accept that a mobile wheel repairer visited the premises during the lockdown period to repair wheels, including paint spraying with water-based paints. Whilst that may have

been during the lockdown period when people were advised to work from home it is, nonetheless, evidence of activity related to the car sales business being carried out from the property.

16. Overall, significant evidence has been presented from the Council and interested parties to indicate that 22 West Avenue was being used for operations relating to the car sales business of MB Cars London Ltd at the time the enforcement notice was served. That evidence relates to cars being parked on the driveway and surrounding streets whilst being advertised for sale, cars being cleaned and repaired and customers visiting the premises to view and purchase cars. In the face of the evidence presented I find the appellant's assertion that the cars parked were either for personal use or as a result of commuter parking unconnected with the property to be less than convincing and, in some respects, contradictory. On the balance of probability, the evidence strongly indicates that the breach of control identified has occurred. Consequently, the appeal on ground (b) fails.

The Appeal on Ground (c)

17. An appeal on ground (c) is made on the basis that the alleged breach of control, if it has occurred, does not constitute a breach of planning control. Although the appellant did not tick that he wanted to apply on ground (c) his statement includes the following sentence:

There is no commercial activity intensification on a scale that has changed the character of the property or sale of motor vehicles, and the existence of the registered car sales company does not amount to evidence of a material change of use.

18. Thus, the appellant appears to acknowledge that some related activity has taken place but not on a level that has amounted to a material change of use.
19. It is sometimes possible to run a business from home without the need for planning permission. However, where the scale or intensity of the business use results in a change to the primarily residential character of the property or area a material change of use will occur for which planning permission would be required. In any given case an assessment is required as a matter of fact and degree.
20. In this case, substantial evidence has been presented of activity related to car sales taking place from the premises. From the information before me, that has undoubtedly had a notable effect on the character of the property and its immediate environs. The intensity of car parking associated with the business is evident in the photographs provided by the Council and interested parties. In addition, the evidence depicts frequent visits from customers and activity relating to car repairs and valeting taking place at the premises on a frequent basis.
21. Within his statement the appellant suggests that customers might pick up vehicles 2 or 3 times a week. However, that appears to relate solely to collections. It seems likely that people will also want to visit and view cars when considering a purchase and not all such visits are likely to result in a sale. It is not clear how many visits occur from people inspecting and collecting cars but the third party evidence indicates quite a significant scale of operation. In the photographs taken by the Council five cars were parked at the property or

on the road immediately outside at one point in time, a volume that could generate substantial customer activity and add to parking congestion on the road. The turnover of the business was substantial. As noted above, the appellant has submitted little to support his assertion that the majority of activity took place away from the site at other storage locations.

22. On the evidence before me that level of activity was significantly greater than one would expect of a normal family home, even one that houses a large family, as is the case here. That resulted in a change in the character of the property and surrounding area on account of increased comings and goings, increased noise and disturbance and the increase in vehicular movements and parking on a residential street. The level of business activity could not be considered incidental to the residential use of the property and, on the balance of probability, a material change of use has occurred from use as a dwellinghouse to use as a dwellinghouse and for the operation of a car sales business. In the absence of planning permission that material change of use represents a breach of planning control and it follows that the appeal on ground (c) must fail.

The Appeal on Ground (f)

23. An appeal on ground (f) is made on the basis that the steps required to be taken by the notice exceed what is necessary to remedy the breach of planning control or, as the case may be, to remedy the injury to amenity that has been caused. The notice requires the cessation of the running of a car sales business from the premises and is clearly aimed to remedy the breach of planning control.
24. Although the appellant has appealed under ground (f) he has not set out any suggested alternative steps, other than those set out in the notice. Consequently, it is not clear precisely how the appellant envisages that the notice should be varied.
25. I am mindful that he is unrepresented and I have considered whether there are any obvious alternatives, beyond the cessation of the use, that would remedy the breach of control. As noted above, it is possible to run a business from home without breaching planning control providing that the nature of the use does not materially alter the primary residential character of the site. However, even at quite a small scale the activities associated with car sales could have a noticeable impact in terms of parking, customer visits and/or servicing, cleaning or repair of vehicles. In the absence of a suggested form of wording I cannot think of an obvious alternative requirement that would remedy the breach of planning control. In other words, I cannot readily see how I could vary the notice to specify how the business could operate in a manner that would not amount to a breach of planning control.
26. In the absence of any obvious alternative, the requirements are not excessive and do not go beyond what is necessary to remedy the breach of control. Therefore, the appeal on ground (f) fails.

The Appeal on Ground (g)

27. The appellant initially appealed on ground (g) on the basis that he needed more time to respond to the notice after submitting a Freedom of Information request to the Council to ascertain what information they held in relation to the

appeal. The appeal form stated that he was expecting a response in relation to that FOI request by 12 May 2022 and subsequent email correspondence indicated that the Council replied on 11 May 2022.

28. Effectively, that argument relates more to the ability of the appellant to make his case in relation to the appeal proceedings which is a different thing to assessing what is a reasonable period to comply with the notice if it is upheld.
29. In email correspondence the appellant requested that a period of two months be given to comply with the notice, instead of the one month set out in the notice. However, in his final comments, he notes that the business now has a new address where cars are parked and where correspondence is directed on the Autotrader website. If that is the case, there would appear to be no business need to extend the timeframe and no compelling argument for extending the period for compliance has been put forward. Therefore, the appeal on ground (g) fails.

Conclusion

30. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice as corrected.

Chris Preston

INSPECTOR