

Appeal Decision

Site visit made on 19 September 2022

by Anthony J Wharton BArch RIBA RIAS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 September 2022

Appeal Ref: APP/E2340/C/22/3294045

Land at 481 Burnley Road, Colne BB8 8LA

- 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 Qaisar Naveed against an enforcement notice issued by Pendle Borough Council.
 - The enforcement notice, reference SW/3762, was issued on 10 February 2022.
 - The breach of planning control as alleged in the notice is as follows:
Within the last 10 years the material change of use as a C3 residential use to a mixed commercial and residential use: the commercial use being the use of land for operating a removals business.
 - The requirements of the notice are as follows:
Cease using the residential premises for a mixed use of residential and as an operating base for removal vehicles and use the premises solely as a residential dwelling.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on grounds (b), (c) and (f) as set out in section 174(2) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
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Decision

1. The appeal is dismissed. See formal decision below.

Matters of clarification

2. The plan attached to the enforcement notice indicates the appellant's end-of-terrace dwellinghouse, which is on a triangular site on the south-east side of Burnley Road which links Nelson and Colne. The red line plan does not include the footway or Lane (Bott Lane) where the removal vehicles have been parked.
3. However, there is no dispute that the appellant parks removal vehicles at the side of his house and there is also considerable photographic evidence submitted by the Council that up to 3 such vehicles have been parked there at the same time and over a long period since at least 2018. This has been corroborated by the initial complaints to the Council. During my site visit (the afternoon of 19 September 2022) I noted two removal vans parked in the lane.
4. It is also the case that in the past the appellant has advertised his removal business, which he refers to as his trade, by use of a sign attached to the house and which could clearly be seen from Burnley Road. However this has now been removed and was not in place at the time of my visit. The vehicles have been parked in Bott Lane and outside of the red-line site shown in the enforcement plan. However, they are clearly related to the appellant's removals business. There is also no doubt that the Council issued the notice on the basis that it was considered

that there had been a change of use and that the parking of the vehicles is a key element and a fundamental reason as to why the Council reached that decision.

5. I have, therefore, considered the appeal on the basis of the enforcement notice relating to the alleged change of use of the dwellinghouse and under the three grounds pleaded. In doing so I am satisfied that no injustice will be caused.

6. There is no appeal on ground (a) and so the planning merits of the case are not before me. I have not, therefore, considered any policy matters and neither are matters such as loss of view or any effect on highway safety relevant to my consideration of this appeal.

7. The appellant has referred to the land where the vehicles are parked as being private land whereas the Council refers to the lane being an adopted highway. However, irrespective of the ownership of the land adjacent to the house there is no dispute that the vehicles are parked on the land and I must consider the appeal on the basis of the notice and as referred to above.

The appeal on ground (b)

8. An appeal on this ground is made on the basis that what is alleged in the notice has not occurred as a matter of fact. At this stage, therefore, it is not a question of whether or not the Council is correct in concluding that a material change of use has occurred. That is a matter under the appeal on ground (c). For this ground of appeal it is simply a question of whether or not, as alleged, the removals vehicles have been parked adjacent to the house and that this parking use is in conjunction with the appellant living at the house

9. Clearly the appellant has referred to keeping removal vehicle(s) at the house overnight in relation to his removals trade. There is also considerable photographic evidence to show up to three removals vehicles being parked adjacent to the house. From this evidence it seems clear to me that what is alleged in the notice has occurred as a matter of fact and the appeal must fail on ground (b). I now turn to the appeal on ground (c) and whether or not the use as carried out amounts to a material change of use of the dwellinghouse at 481 Burnley Road.

The appeal on ground (c)

10. The courts have held that whether or not a change of use has occurred must depend on the particular circumstances of each case and as a matter of fact and degree. The basic test is to compare the lawful use of the land or property with the use being carried out and to assess whether the use alters the character of usage of the property to such an extent that a material change has taken place.

11. In this case there is no dispute that the lawful use of the property at 481 Burnley Road is a dwellinghouse in Use Class C3. In the appeal statement the Council sets out exactly what this means in terms of usage and also indicates that any commercial activities are excluded from such a residential use. The Council contends that the property is being used both as a dwellinghouse and a commercial base for the appellant's removals business.

12. The appellant argues that he is entitled to park his removal vehicle(s) at his home. It is argued that it is normal for a tradesperson to use a vehicle associated with the business and to keep it at one's normal residential address and for that vehicle to be used to get to and from a place of work.

13. I acknowledge that if a tradesperson parks a vehicle at his residential address and simply goes to and from a specific workplace then this would not constitute a change of use of the dwellinghouse. However, in this instance the evidence does

not indicate that this is exactly how the appellant is using the dwelling and the adjacent parking space on the adjacent lane. There is nothing to indicate that the appellant has any other commercial base or office to which he commutes before returning to park the vehicle(s) adjacent to his house. Instead it would appear that he starts his removal trade from home, carries out removals and then returns home where the vehicles are parked adjacent to the house.

14. Having seen the photographic evidence and having seen vehicles parked on the land I consider that the character of usage is fundamentally different from the mere parking of a vehicle overnight at the residential premises. The comings and goings of more than one vehicle, combined with the parking on the pavement and in the lane is far more intensive a use than if a single van was simply parked overnight and used daily to travel to and from a place of work.

15. Whilst it might be normal for the latter to take place it is not, normal or reasonable to park several commercial vehicles outside a dwelling house and to operate a removal business from this location. I agree with the Council that the evidence relating to the parked vehicles coupled with the former advertisement indicates that the appellant is using the house not only as his dwelling, but as a base for the operation of the removals business. The submissions by others reinforces my view that this is the case.

16. As a matter of fact and degree and based on the specific circumstances of this case, I consider that a material change of use has occurred and that a mixed residential and commercial use is now taking place at the appeal premises. There is no planning permission in place for this change of use and it does not constitute permitted development. It follows that a breach of planning control has occurred and the appeal must also fail therefore on ground ((c).

The appeal on ground (f)

17. The appellant has not put forward any lesser steps which would overcome the harm caused by this unauthorised change of use of the dwellinghouse. I also agree with the Council that any restriction of the number of commercial vehicles kept at the property would not resolve the issues and, in any case, would be difficult to enforce.

18. Like the Council, therefore, I do not consider that the requirements of the notice are excessive and nor do I consider that there are any reasonable lesser steps which could be taken to mitigate the harm caused by this unauthorised change of use of the property.

Other Matters

19. In reaching my conclusions I have taken into account all of the other matters raised by the appellant and by the Council. These include the initial submissions; the detailed statements and appendices and all of the photographic evidence provided by both the Council and the complainant. However, none of these carries sufficient weight to alter my conclusions on the three grounds of appeal pleaded. Nor is any other factor of such significance so as to change my decision that the appeal should be dismissed.

Formal Decision

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

Anthony J Wharton

Inspector