



Appeal Decision

Site visit made on 22 September 2022

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th NOVEMBER 2022

Appeal Ref: APP/G5180/C/21/3287386

Land at 101 Birch Tree Avenue, West Wickham BR4 9EQ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Plamen Sakutov against an enforcement notice issued by the Council of the London Borough of Bromley.
 - The notice was issued on 25 October 2021.
 - The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of the land from a residential use to a mixed use of residential and the commercial storage of building materials and equipment on the land.
 - The requirements of the notice are to: Cease the unauthorised use of the land for commercial storage of building materials and equipment as described above, and remove all items associated with the unauthorised use.
 - The period for compliance with the requirements is 3 months from when the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(b) and (c) of the Town and Country Planning Act 1990 as amended.
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Summary Decision: The appeal is dismissed and the enforcement notice is upheld

Ground (b) and Ground (c)

1. Having regard to the allegation as made in the enforcement notice and the appellant's response to this in his appeal, it is more logical to deal with the ground (b) and ground (c) appeal together in this case.
2. The appeal on ground (b) is that the matters alleged in the enforcement notice, which appear to the Council to constitute the breach of planning control, have not occurred. In order to succeed on this ground, the appellant must demonstrate that the matters stated in the enforcement notice have not occurred. To succeed on ground (c), he must demonstrate that, on the balance of probability, the matters alleged in the notice do not constitute a breach of planning control. In both cases the burden of proof is on the appellant.
3. At my visit I noted that the type of building materials and equipment I have seen referred to in the evidence of both parties is primarily stored at the bottom half of the site. There were several piles of stored items, including ladders, plastic, scaffolding and special trolleys for transporting larger builders' items. Many of the items I observed are visible in the Council's photographs of the site, particularly those taken more recently.
4. At the rear of the site was a large storage unit divided in two. Within both sections of the unit I observed fitted shelves. The shelves and the rest of the unit were being used to store smaller items of builders' equipment and tools,

such as hand held or electrical tools. There were also various items of builders' materials, including insulation, plumbing pipes and fittings, and electrical wires and fittings. The size of the divided unit is comparable to a single garage and each section was particularly full of the stored items.

5. A mixed use is alleged, which is one where two or more primary uses occur within a single planning unit, but where it is not possible to say that one is incidental or ancillary to the other or where, as a matter of fact and degree, the uses are not physically and/or functionally separated.
6. There is clearly a residential use of the site. This is not disputed. As for the other component of the mixed use, it is clear that the appellant does not dispute that there is a use of the site for the storage of building materials and equipment. His claim is, however, that this use is not for commercial purposes. That these items are there for the purposes of renovating the house at the appeal site, for which he is the landlord.
7. In response to the appellant's claim, the Council points to the representations made by interested parties, which refer to comings and goings to the property and activity in the rear garden. In particular I note the photographic evidence over various dates of a number of commercial type vehicles (vans) visiting the property, as well as the movement of building material and equipment to and from the site. This evidence is corroborated by a number of residents.
8. I have seen the appellant's response to some of the dates mentioned in this evidence, in particular his visit to the property to remove trees. His evidence does not, however, persuade me that the activity I can see in the photographs taken on various other dates is not, on the balance of probability, demonstrative of commercial activity associated with the storage use alleged. Indeed, there is a lack of any ongoing building works at the site which might explain the activity visible in this evidence over numerous dates.
9. I note the appellant has provided correspondence between him and the Council in which he addresses the suggestion of the commercial activity; he says that material has been removed from the site and that some material was left by the previous occupier. Whilst this may be the case, I still consider there to be a significant amount of building material and equipment at the site, which is more than would be expected at a residential property and is more likely than not to be consistent with a commercial activity. Furthermore, I note the third party photograph showing part of the appeal site, which was taken in October 2017, some two months prior to the appellant's purchase of the property. There is little evidence in this photograph of building material or equipment.
10. Having regard to the above, I find as a matter of fact and degree that there are two primary uses of the site. Also, it is more likely than not that these uses comprise a residential use and a use for the commercial storage of building materials and equipment. Having regard to the evidence of activity at the site associated with the storage use, I conclude that the storage use is not ancillary or incidental to the residential use.
11. As for the physical and functional relationship between the two uses, I note above that the building materials and equipment is stored within the bottom half of the site, and within the unit at the rear of the site. Whilst there was little evidence of any domestic items within this part of the site, there is no suggestion that the occupiers of the dwelling at the appeal site do not use and

access this bottom part of the site. I also noted that there is no physical separation between this bottom area of the site and the remainder of the property. On this basis I find as a matter of fact and degree that the two uses are not physically and/or functionally separated. Accordingly, the use of the appeal site is correctly described as a mixed use, where both of the primary uses alleged occur within a single planning unit.

12. On a final matter, I note the appellant's claim that the storage use is taking place in preparation for future works to the property. This is, however, inconsistent with the evidence of commercial vehicles arriving at the site on numerous dates not only bringing materials and equipment, but also taking them from the site. Notwithstanding this, even in the circumstances where future works to the property were planned, I have not been given any reason why a use of the land for the commercial storage of building materials and equipment in anticipation of those works would not be a breach of planning control, such that express planning permission would not be required. Furthermore, it has not been suggested that the necessary planning permission has otherwise been granted.
13. Having regard to all of the above, and on the basis of all evidence before me, I conclude that as a matter of fact and degree the alleged breach of planning control set out in the enforcement notice has occurred. As such, the appeal on ground (b) should fail. It is also more likely than not that the material change of use of the appeal site from a residential use to a mixed use of residential and the commercial storage of building materials and equipment constitutes a breach of planning control. For this reason, the appeal on ground (c) should not succeed.

Conclusion

14. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

Formal Decision

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

J Moss

INSPECTOR