



Appeal Decisions

Site visit made on 9 November 2022

by Thomas Shields MA DipURP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 January 2023

Appeal A: APP/Z5060/C/21/3270570

Appeal B: APP/Z5060/C/21/3270571

59 Beam Avenue, Dagenham, Essex, RM10 9BS

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (hereafter “the Act”).
 - The appeals are made by Mr Frank Robert (Appeal A) and Miss Omolola Yakubu (Appeal B) against an enforcement notice issued by the Council of the London Borough of Barking and Dagenham.
 - The enforcement notice was issued on 11 February 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the unauthorised change of use to a car repair business (Use Class B2).
 - The requirements of the notice are:
 1. Cease the use as a car repair business (Use Class B2).
 2. Remove all alterations and fixtures related to car repair business (Use Class B2).
 3. Remove all consequent waste material from the premises.
 - The period for compliance with the requirements is 6 months.
 - The appeal proceeds on the grounds set out in section 174(2)(b), (c) and (d) of the Act.
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DECISION

1. The appeals are allowed and the enforcement notice is quashed.

Appeal on ground (b)

2. An appeal on ground (b) is a claim that the matters stated in the notice which may give rise to the breach of planning control have not occurred as a matter of fact. Note that “occurred” is past tense.
3. Thus, for this ground of appeal to succeed it must be shown that prior to the issue of the enforcement notice the alleged change of use of the land for a car repair business had not occurred. The onus of proof falls to an appellant, with the test of the evidence being on the balance of probability.
4. The appellants’ case¹ is that they are the owners and occupiers of 59 Beam Avenue and they occupy the property with their four children. Mr Robert had previously registered a limited company to No.59 in respect of a car repair business. However, he goes on to state that during a visit from Council officers in November 2020 he explained to the officers that the property itself was not being used for car repairs services at all. He goes on to state that allegations of car repairs may have been due to vehicles parked at No.59, or from him carrying out repairs to his own vehicle.

¹ Appellant’s submitted Appeal Form

5. The entirety of the Council's evidence on ground (b) states² the following:
"Other officers of the local authority and I have witnessed the car repair business use and subsequent increased footfall and parking on multiple occasions. The owner has also stated the business from his garage does occasionally take place at his home; out of hours, when the garage is closed, customers do bring their vehicles to his property at 59 Beam Avenue".
6. Notwithstanding what the above statement says, there is no evidence submitted of any officer investigation in the form of recorded visits to the property, including, for example, in the form of dated and timed records, notes, or photographs, etc. Consequently, there is no evidence before me of vehicles being observed by officers on particular dates being repaired. The statement that *"The owner has also stated the business from his garage occasionally takes place at his home"* is contested by the appellant's evidence. There are no details (redacted or otherwise) of any complaints having been made to the Council and no planning contravention notice was issued. Additionally, there are no third party representations submitted in response to the appeal which may have supported the Council's case.
7. During my visit to the appeal site I saw that No. 59 was in use as a single family dwelling house by the appellant and his family. There was no visual evidence in the external areas of the property or in the rear outbuilding (for example, equipment/tools, car parts, oil stains) to indicate past use of the property as a car repairs business.
8. Having regard to all of the information before me, I have no reason to consider the appellant's case as being less than probable. There is a lack of any convincing evidence from the Council or from others for me to consider otherwise. As such, I find on the balance of probability that the appeal should succeed on ground (b) and the enforcement notice will be quashed.
9. In these circumstances the appeal on grounds (c) and (d) do not fall to be considered.

Thomas Shields

INSPECTOR

² Council's Statement of Case