



Appeal Decision

Site visit made on 19 June 2023

by David Jones BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 August 2023

Appeal Ref: APP/B4215/C/23/3317133

Unit 1, 48 Hamilton Road, Manchester M13 0PE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Maher Obeid (Car House of Britian Ltd) against an enforcement notice issued by Manchester City Council.
 - The notice was issued on 24 January 2023.
 - The breach of planning control as alleged in the notice is the material change of use from textile manufacturing place (Class B2) to use as a Car Sales Showroom (Sui Generis).
 - The requirements of the notice are to: Cease the use as a Car Sales Showroom (Sui Generis), removing all vehicles, equipment and advertising associated with the use.
 - The period for compliance with the requirements is: Two months.
 - The appeal is proceeding on the grounds set out in section 174(2) (c) and (g) 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 have lapsed.
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Decision

1. It is directed that the enforcement notice is corrected and varied by;
 - In section 3 the deletion of the alleged breach in its entirety and substituting instead the words "the material change of use of the land from textile manufacturing place to the sale and display of motor vehicles".
 - In section 5 the deletion of the requirements in their entirety and substituting instead the words "Cease the use of the land for the sale and display of motor vehicles and remove all vehicles and equipment associated with the use from the land".
 - In section 6 the deletion of the words "two months" and the substitution of the words "four months".
2. Subject to the corrections and variations, the appeal is dismissed and the enforcement notice is upheld.

The Notice

3. The alleged unauthorised use of the land as set out in the notice is "car sales showroom". Given that a large number of vehicles are displayed for sale externally on the land with prices in their windscreens, it seems to me that a simpler description of "sale and display of motor vehicles" would be more apt. The allegation has therefore been corrected accordingly.

4. The requirements set out in the notice include the removal of advertising associated with the use. I observed during my visit that signage advertising the business has been erected on the appeal building itself. Advertisements on the land however are not included in the alleged breach of planning control and clearly, I cannot widen the scope of the notice. I shall therefore remove any reference to advertisements within section 5. The requirements of the notice should match the stated breach, and therefore in view of the above paragraph I shall correct the requirements so that they require the use of the land for the "sale and display of motor vehicles" to cease.
5. I can undertake these corrections using the broad powers available to me under the provision of section 176(1) of the Act, without causing injustice to the parties.

Ground (c)

6. To succeed on ground (c), the appellant must demonstrate that the matters alleged in the notice do not constitute a breach of planning control. The burden of proof is on the appellant.
7. I understand that the building had previously been occupied by a textile manufacturing business under Use Class B2 of the Town and Country Planning (Use Classes) Order 1987 ("the Order"). This has not been disputed by the appellant. The building is now occupied by a company that deals in the sale of motor vehicles, Car House of Britian Ltd. The appellant accepts that they use the land to park and display cars, with some cars parked outside and others stored inside the building that do not move until they are sold. The appellant considers that this is no different to the previous textile manufacturing business which saw cars parked on the land and goods stored inside the building itself.
8. I saw during my visit to the appeal site that cars are parked within the building itself and on the land immediately surrounding the building. Many of the cars parked externally were clearly advertised for sale with the price displayed in their windscreens. The building also contained signage advertising 'Car House of Britian – Quality Used Cars'. The appellant also accepts that the site operates as a 'Car sales showroom' and that they can get up to three customers a day visiting the site. It is therefore clear from the evidence that the primary use of the site is now for the sale and display of motor vehicles.
9. Article 3(6) of the Order sets out a variety of different uses which do not fall within any of the specific Use Classes. These are known as '*sui generis*' uses. Indeed Article 3(6)(e) of the Order specifically lists '*the sale or display for sale of motor vehicles*' as being one such use.
10. I conclude that the primary use of the land is for the sale and display of motor vehicles. That constitutes a *sui generis* use and does not fall within Use Class B2 or any other Use Class. As the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) does not permit the change of use of a building from Use Class B2 to a *sui generis* use, express planning permission is required. Since no such planning permission has been granted for the development it thereby constitutes a breach of planning control.
11. For the above reasons, I conclude that the appeal under ground (c) fails.

Ground (g)

12. The appeal on ground (g) is that the time given to comply with the requirements of the notice is too short. The notice specifies a period of two months after the notice takes effect.
13. Although the appellant has not stated what he would consider to be a reasonable compliance period, it is argued that relocation would result in loss and damage to the business. Primarily this is due to not currently having alternative premises to move to and that, in the event that suitable premises were found, the associated cost would be significantly greater than they were when the business moved to the appeal site.
14. Whilst I am mindful that the harm resulting from the breach of planning control should be remedied as soon as possible this also must be balanced against the interests of the appellant, with particular regard to allowing an appropriate period for the business to relocate. Accordingly, I consider that four months is a reasonable amount of time which would strike the appropriate balance.
15. For the reasons given above, I consider it would be reasonable to extend the compliance period to four months. The appeal under ground (g) therefore succeeds and the enforcement notice has been varied accordingly.

Other Matters

16. The appellant also argued that, in his view, the current use of the site was an improvement on the previous use as a textile manufacturing business. In particular, he considered that the visual appearance of the site had been improved and that there is less disturbance and nuisance caused to the local community. However, as there is no appeal on ground (a) I am unable to take account of the planning merits of the development.

Conclusion

17. For the reasons given above I conclude that the appeal does not succeed, save for ground (g). I have therefore upheld the enforcement notice with corrections and variations.

David Jones

INSPECTOR