



Appeal Decisions

Inquiry held on 21, 22 & 23 November 2023

Site visits made on 22 & 23 November 2023

by Mark Harbottle BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 January 2024

Appeal A Ref: APP/C1950/C/23/3326649

Appeal B Ref: APP/C1950/C/23/3326650

Land South of Darby Drive, Spinney Lane, Welwyn AL6 9TB

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended ("the Act") against an enforcement notice issued by Welwyn Hatfield Borough Council. Appeal A is made by Mr Michael Wager ("the first appellant") and Appeal B is made by Mrs Karen Wager.
 - The notice, numbered ENF/2021/0145, was issued on 29 June 2023.
 - The breach of planning control as alleged in the notice is: Without planning permission, the unauthorised change of use from vehicle storage to a mixed use of vehicle storage, vehicle breaking yard and vehicle recovery business within the last 10 years.
 - The requirements of the notice are to: (1) Cease the use of the land which is being used as a vehicle breakers yard and vehicle recovery business; (2) Remove all vehicles, tyres, vehicle parts, storage containers, equipment and hardcore that have been imported on to the land and any other materials or equipment that has enabled the vehicle breaking and vehicle recovery business; and (3) Remove all materials, debris, waste and equipment resulting from compliance with the other requirements of the notice from the property and its premises.
 - The period for compliance with the requirements is: 4 months from the date the notice takes effect.
 - Appeal A is proceeding on the grounds set out in section 174(2)(a), (b), (d), (f) and (g) of the Act. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
 - Appeal B is proceeding on the grounds set out in section 174(2) (b), (d), (f) and (g) of the Act.
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Decisions

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

Preliminary Matters

2. The Inquiry sat for 3 days. All evidence was given on affirmation.
3. Appeals were made on ground (c) that the vehicle breaking yard and vehicle recovery business are incidental to vehicle storage, which is agreed to be the lawful use of the land. However, ground (c) is that the matters stated in the notice, if they occurred, do not constitute a breach of planning control. The relevant matter stated in the notice is the unauthorised change of use to a mixed use of vehicle storage, vehicle breaking yard and vehicle recovery business. The appellants therefore deny that the alleged change of use has occurred, which is more appropriately considered as appeals on ground (b)¹.

¹ That those matters (stated in the notice) have not occurred.

Appeals A and B - the appeals on ground (b)

4. It is common ground that a level of vehicle breaking has been carried out in the past, incidental to a use for vehicle storage found to be lawful in 2001². If the vehicle breaking yard and vehicle recovery business alleged in the notice are incidental to the storage use, the material change of use alleged in the notice will not have occurred as a matter of fact.
5. The occupier of the site when the notice was issued, and in the immediately preceding period, was Livegran Dube, trading as DSP Autos. The business has been advertised or described in user reviews as providing a range of services, including sales of vehicles and vehicle parts, part finding and extracting, vehicle recycling, vehicle towing, and breakdown recovery³.
6. Mr Dube and a business partner signed a commercial lease with the first appellant on 1 August 2020. The copy of this document provided is incomplete, lacking any content between clause 1.d. and clause 44, and does not identify the land in question. However, clause 1.a. defines a building on the land as 14 Spinney Lane, an address that has been associated with the appeal site. Notwithstanding the missing content, I have no reason not to accept that Mr Dube has leased the site since August 2020.
7. Mr Dube appeared at the Inquiry and gave oral evidence. He described his business as having 2 elements, which he called 'Copart' and 'export'. He explained that:
 - Copart is an online vehicle auction and vehicle salvage business that he buys vehicles from.
 - His export activity involves buying vehicles that can be re-used, storing them at the appeal site, and shipping them to Africa. Some of these vehicles may only be fit for re-use in the destination country, not the UK.
8. He also sells vehicles to UK buyers, affirming that it accounts for around 10% of his business, although he did not indicate whether that is in terms of turnover, numbers of vehicles or time spent. Buyers may collect these vehicles from the appeal site or delivery is arranged if they are not roadworthy.

Vehicle storage

9. It is common ground that vehicles were being stored on the appeal site when the notice was issued. The difference between the parties comes down to whether it was part of the alleged mixed use or a continuation of the primary use of the land found to be lawful in 2001.
10. Mr Dube's export activity involves the storage of vehicles on the appeal site and the same would be true of any vehicle there awaiting sale to a UK buyer. At the time of my site visits there were approximately a dozen vans on the land and a smaller number of cars, although there was no way of telling how long any vehicle had been there or whether it would be broken, sold, or exported. However, none appeared to lack parts, suggesting that, if they were not to be broken, they were being stored prior to export or sale. I have been given no reason to believe this differs from when the notice was issued.

² APP/C1950/C/00/1052214, dismissed 2 April 2001.

³ CD 6.20.

11. The export element of Mr Dube's business, in which vehicles are kept on site between their acquisition and despatch, appears consistent with the vehicle storage use previously found to be lawful. This is analogous with the storage described in appeal decisions from 2013⁴, involving 'end of life' vehicles that the first appellant's car dealership could not sell to the public, and which awaited despatch to a scrap yard. Furthermore, any vehicles kept on the site awaiting collection or delivery to a new owner would also be storage.

Vehicle breaking yard

12. The 2013 appeal decisions recorded that the storage of vehicles at the site had always been accompanied by an incidental element of breaking for spare parts.
13. Mr Dube affirmed that when he buys a vehicle that is beyond repair from Copart, it removes the engine and axle and provides him with a bay on its land, where he removes any parts that he wishes to take. That is clearly vehicle breaking, but it does not take place at the appeal site.
14. Other vehicles are bought online and/or delivered to the site. On occasion, Mr Dube will acquire a vehicle in worse condition than he had estimated, including some that turn out to be beyond repair. He declared that he either sells these vehicles for parts or sells the vehicle after removing those parts he can.
15. Mr Dube declared that he does not hold a licence to break vehicles that are incapable of re-use. Nevertheless, even if that breaking is carried out elsewhere, any prior removal of parts at the appeal site must also constitute vehicle breaking, in the same way as the activity recorded in 2013. However, when questioned, Mr Dube estimated that 95% of the vehicle breaking he undertakes is carried out away from the appeal site.
16. Some vehicle breaking was being carried out at the site when the notice was issued, consistent with the removal of parts from those vehicles found to have been acquired in worse condition than expected that Mr Dube described. However, it appears to have been a small proportion of the overall business activity, falling outside his description of the 'Copart' element.
17. Several residents stated that vehicle breaking had intensified and become a primary activity prior to the issue of the notice, with attendant noise and incidents of evening and weekend working. While reference was made to a log recording those incidents, this was not produced. A neighbour representing other residents, Carolyn Nolan, affirmed that complaints about noise from vehicle breaking had been submitted to the Council. However, other than the matters raised in 2020 and 2021 considered below, this evidence was not presented. Neither did the Council provide the findings of any subsequent investigation. Crucially, there is no evidence to contradict or cast doubt on Mr Dube's assertion that he carried out 95% of his vehicle breaking elsewhere.
18. Mr Dube was asked, under cross-examination, about allegations reported to the Council in 2020 and 2021 of working on site for up to 14 hours a day, even as late as 11pm, of 7-day working and of several people working at the site. He denied them all. Mrs Nolan's oral evidence included specific reference to a car being broken with an angle grinder on a Saturday evening in summer. While a precise date was not given, the facts were clearly and credibly stated. However, this evidence and the other reports cannot demonstrate that the

⁴ APP/C1950/C/12/2181305 (allowed) & 2181310 (dismissed), 2 January 2013.

relevant incident of vehicle breaking was not incidental to vehicle storage at the site, which, having been found lawful, is not subject to any restrictions in working hours or noise levels.

19. In support of their contention that vehicle breaking at the site is incidental to the vehicle storage use, the appellants point out that there is no specialist breaking equipment on the land. However, as the incident described by Mrs Nolan suggests, an angle grinder and other hand tools might be used instead, although Mr Dube affirmed that he did not cut up cars with his angle grinder. In this respect, I do not consider an angle grinder to be specialist equipment. Nevertheless, I recognise that if vehicle breaking grew in significance, such that it was no longer incidental to storage of vehicles at the site, it is likely that specialised equipment would be needed to work efficiently. In this regard, while a jack that could be used in vehicle breaking is on adjacent land in photographs from 2022, I saw when on site that it has no electrical connection and did not look as if it had been used for some time, if it ever was used on the appeal site.
20. There is no evidence that the vehicle breaking carried out at the site has involved vehicles that had been acquired for that purpose, rather than brought to the site for storage and found unsuitable for resale. Furthermore, there is insufficient evidence to confirm that vehicle breaking at the site has been more than infrequent, or that it has involved a significant proportion of the site or of the vehicles that were there. It is evident, however, that it has caused distress to nearby residents through noise on occasions and that will inevitably have made it a very noticeable component of activity at the site. Nevertheless, it is important to separate how and when vehicle breaking is done from the central issue of whether it is incidental to vehicle storage. While it appears to have been carried out noisily and at unsocial hours, that does not confirm that it was not incidental to the vehicle storage use of the site.
21. Considering all the above, the definable character of vehicle breaking in the period leading up to the issue of the notice cannot be sufficiently distinguished from what had been agreed as incidental to the vehicle storage use. It is therefore not possible to conclude that the 2 are materially different.
22. The site includes areas used for storage of vehicle parts, some on covered wooden racking, some in the open air, and some within a container. A degree of storage of used parts with expected sale value is a normal part of a vehicle breaking enterprise and there is no evidence that it is incidental to the storage of vehicles on the site for export. None of the historic evidence records storage of parts on this scale prior to Mr Dube's occupation of the site since 2020.
23. The extent of this storage suggests that vehicle breaking and the trade in parts arising from it, evidenced in terms of visitors to the site and the despatch of parts by courier, have been significant aspects of Mr Dube's business. However, that does not necessarily contradict his affirmation that only a small proportion of the vehicle breaking that gave rise to those parts took place at the appeal site, with the majority taking place elsewhere.
24. Accordingly, the extent of parts storage and the trade in those parts, involving visitors to the site and despatch of parts by courier, does not demonstrate the existence of a vehicle breaking yard on the site, as alleged in the notice. It is, however, not inconsistent with Mr Dube's assertion that he undertakes 95% of his vehicle breaking elsewhere. The parts removed during off-site vehicle

breaking need to be kept somewhere and no evidence of any location for that, other than the appeal site, has been presented.

25. There is nothing to suggest vehicle breaking at the site, as indicated in the incidents from 2020 and 2021, ceased before the issue of the notice. However, and despite the reported method and timing of vehicle breaking activity at the site, it has not been shown to have gone beyond the small proportion Mr Dube described. Rather, the evidence indicates storage and sale of spare parts that is not incidental to the storage of vehicles at the site or to the limited vehicle breaking that would itself be incidental to the vehicle storage use of the land. Mrs Nolan's affirmation that people bringing deliveries or collecting parts have often mistakenly called on her and other neighbours lends support to that view. The reported frequency of these events points to a significant trade in vehicle parts that is not incidental to the identifiable on-site vehicle breaking.
26. The scale of the storage and sale of spare parts is disproportionate to the extent of vehicle breaking that can be identified as having taken place at the site, which appears to remain incidental to vehicle storage. The lack of physical and functional connection between vehicle storage on the site and the storage and sale of spare parts make the latter a separate component of a new mixed use. However, that mixed use is different in character from the mixed use alleged in the notice.

Vehicle recovery business

27. The appellants contend that recovery activity at the site is limited to bringing and removing vehicles from it. Mr Dube advertises a 24/7 vehicle recovery service, but he states that he has only one recovery vehicle, which he parks at home, and that the work is shared with friends who also have recovery vehicles. While he affirmed that this does not involve use of the appeal site, he also said that vehicles are occasionally delivered there if the owner is stranded.
28. Photographs taken by the Council in June 2022 show 2 recovery vehicles on the site. The Council also found an online advertisement Mr Dube had placed for sale of a recovery vehicle in March 2023, although it is unclear what connection that vehicle may have had with the use of the site.
29. Other photographs show a recovery vehicle at the site or on the access track from Spinney Lane in 2013, 2014, 2015 and 2016, when the site was being used for the agreed lawful storage of vehicles, with incidental vehicle breaking. The evidence of recovery activity in the period leading up to the issue of the notice does not appear to differ from this.
30. Vehicle recovery begins with the despatch of the recovery vehicle from wherever it is at that time and ends with the delivery of the recovered vehicle to a chosen destination. While photographic evidence confirms there have been recovery vehicles on the site in recent years, it does not assist in determining the purposes those vehicles were used for. In this respect, I am mindful that they may also be used to bring vehicles to the site to be stored, as the appellants claim. The available evidence does not indicate that recovery vehicles are permanently based at the appeal site or that they are used exclusively for the advertised recovery business. It also follows from Mr Dube's affirmation that any vehicle used in such a business would be at his home for much or most of the time.

31. Accordingly, the available evidence does not indicate a material difference in the character of vehicle recovery activity at the site in the period leading up to the issue of the notice from that undertaken in connection with vehicle storage.

Conclusion on ground (b)

32. For the reasons given, the definable character of the mixed use of the appeal site in the period leading up to the issue of the notice was materially different from the vehicle storage use agreed to be lawful. However, by reason of the storage and sale of vehicle parts that is not incidental to the breaking of vehicles stored at the site, it was also of a different definable character from the mixed use alleged in the notice.
33. Therefore, while it may be for reasons that were not part of the appellants' case, I find that the material change of use alleged in the notice has not occurred as a matter of fact. I have considered whether the notice could be corrected to describe the mixed use that I have found to have been carried out, using the power granted to me by section 176(1)(a) of the Act. However, that course of action should only be taken if the correction would not cause injustice to the appellants or the Council. In this instance I cannot be certain the appellants would not have pursued their appeals differently, including the provision of other evidence, if the alleged mixed use had included the storage and sale of vehicle parts. It is therefore not open to me to correct the error since injustice would be caused were I to do so.

Conclusion

34. For the reasons given above, I conclude that the appeals should succeed on ground (b). The enforcement notice will be quashed.
35. In these circumstances, the appeals on the grounds set out in section 174(2)(a), (d), (f) and (g) of the Act and the application for planning permission deemed to have been made under section 177(5) of the Act do not fall to be considered.

Mark Harbottle BSc MRTPI

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Daniel Stedman Jones

He called

Graeme Free MA MRTPI

Associate Director, DLP Planning Ltd.

Michael Wager

Livegran Dube

FOR THE LOCAL PLANNING AUTHORITY:

Josef Cannon

He called

Stephen Connell BA (Hons)

Director, GC Planning Partnership Ltd.

Dip TP MRTPI

INTERESTED PARTIES:

Carolyn Nolan

Documents submitted at the Inquiry

- 1 The appellants' photographs taken when the concrete base was removed.
- 2 Signed front page of the Rabley Heath residents' representation.