



Appeal Decision

Inquiry held on 12 December 2023

Site visit made on 12 December 2023

by Mr James Blackwell LLB (Hons) PGDip, Solicitor

an Inspector appointed by the Secretary of State

Decision date: 1st February 2024

Appeal Ref: APP/U5360/C/22/3304078

16-18 Rossendale Street, Hackney, London, E5 8TA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
- The appeal is made by Mr Ben Weberman against an enforcement notice issued by London Borough of Hackney.
- The notice, ref 2021/0374/ENF, was issued on 28 June 2022.
- The breach of planning control as alleged in the notice is "Without Planning Permission, the material change of use of the land to mixed-use (SG) comprised of Storage & Distribution (B8) and Residential (C3)".
- The requirements of the notice are to: 1. Cease the use of the Land as Storage & Distribution and Residential; 2. Remove all fixtures and fittings and equipment facilitating the use of the Land as a storage and distribution facility including all motor vehicles used in connection with the unauthorised use as set out in (1); 3. Remove all fixtures, fittings and equipment facilitating the use of the land as residential including the caravan used in connection with the use as out in (3); 4. Make good all damage to the Land resulting from the removal of the unauthorised works as listed above; and 5. Upon completion of the above steps, 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 2 months after the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(b) and (d) of the Town and Country Planning Act 1990 as amended (1990 Act).

Summary decision: The appeal is dismissed and the enforcement notice is upheld with corrections and variations in the terms set out below in the Formal Decision.

Applications for Costs

1. Applications for costs have been made by both main parties. These applications are the subject of separate decisions.

Preliminary Matters

2. All evidence during the inquiry was given under oath.

Site Address

3. The address included in the enforcement notice (EN) is "16-18 Rossendale Street, Hackney, London, E5 9BW". Due to discrepancies with the cited address, the appellant says that they were unable to identify the land to which the EN relates, and that the EN is therefore a nullity.
4. Whilst the cited postcode was inaccurate, title documents from the Land Registry confirm that the official street address for part of the appeal site is 16

and 18 Rossendale Street, as referenced in the EN. Whilst the appeal site does extend beyond the boundary of this registered address (appearing to incorporate part of no. 20), the site was correctly identified, at least in part. The plan attached to the EN also clearly demarcates the whole of the appeal site, which accurately reflects the physical boundaries of the site when seen on the ground.

5. Caselaw¹ is clear that a failure to state the street number of the premises enforced against, or an incorrect address, does not render the EN a nullity or invalid, so long as the recipient is not misled. In this instance, I am satisfied that the appellant would have been able to identify the land being enforced against from the listed site address and the attached plan, and was therefore not misled in this regard. In turn, the EN is not a nullity or invalid. Nonetheless, I have corrected the address in the EN to ensure the postcode is accurate. This correction is also reflected in the banner heading to this decision.

Late Evidence

6. Whilst the appellant's Statement of Case was submitted late, I agreed to accept it into evidence, as without it, their case would have been very unclear. Given it was very short, the Council would have had sufficient time to review its content well in advance of the inquiry.

Additional Documents

7. During the inquiry, title documents were submitted by the Council to confirm the accuracy of the site address. The appellant submitted a copy of their opening statement, as well as an additional short letter relating to the use of the appeal site. The Council also submitted their closing submissions in writing. Each of these documents were accepted without dissent, and are listed at the end of this decision.

Amendments to Enforcement Notice

8. The allegation in the EN refers to a "mixed use (SG) comprised of Storage & Distribution (B8) and Residential (C3)". Whilst the Council's intention with regards to the alleged breach is relatively clear, it is inaccurate for individual use classes to be referenced as part of a mixed use, as a mixed use will be a wholly separate use in its own right. The reference to a C3 use is also not accurate in any event, as this use class relates to dwellinghouses, and does not encompass a caravan being used for residential purposes.
9. Nonetheless, the Council has suggested a number of amendments to the EN, to provide greater clarity and specificity in terms of the matters alleged. Broadly speaking, these amendments would substitute references to the "storage and distribution use (B8)" in the allegation to a "waste management operation and associated parking". The suggested changes would also specify that the alleged residential use is introduced through the stationing of a caravan for such use. Corresponding variations are also suggested to the requirements of the EN.
10. The reasons for the notice establish that the allegation relates to the storing and parking of waste vehicles and associated waste. The reasons are also explicit that the residential use arises from the stationing of a caravan within the site for such use. When read alongside the reasons for the EN, it is

¹ Coventry Scaffolding Co (London) Ltd v Parker [1987] JPL 127

therefore clear that the alleged storage and distribution use relates to the storage and parking of waste vehicles and associated waste, or in other words, a waste management operation. Similarly, it is clear that the alleged residential use results from the stationing of a caravan for such use. The suggested amendments would therefore not cause injustice to the appellant, as the allegations should already have been interpreted in this way. The amendments would also remove any reference to a distribution use, which the appellant contends has never occurred.

11. For these reasons, I consider that the suggested amendments are necessary to overcome the issues with the allegations, as outlined above. They would also add greater clarity and specificity to the EN without causing injustice to the appellant. I have therefore incorporated the suggested changes into the EN.

APPEAL ON GROUND B

12. Pursuant to ground (b), the appellant contends that the matters alleged in the EN have not occurred. To succeed on this ground, the burden is on the appellant to demonstrate, on the balance of probability, that the alleged material change of use (MCU) has not occurred. As a legal ground of appeal, the planning merits of the alleged development are not relevant.

Main Issue

13. The main issue in respect of this ground is whether or not the MCU of the land to a mixed-use comprising a waste management operation with associated parking and the stationing of a caravan for residential use, had occurred prior to the EN being issued.

Reasons

14. The appeal site comprises a bare parcel of land on the eastern side of Rossendale Street, and sits between two residential blocks of flats. Historically, the site was used as a vehicle repair workshop, with much of it being occupied by a garage facilitating this use. Whilst the garage is understood to have been demolished in or around 2016, the appellant contends that the site has continued to be used for vehicle repairs and servicing ever since, and that no MCU has occurred.

Waste Management Operation

15. The appellant is the owner of a waste management company called Swift Waste Management Ltd. The company manages waste from residential, commercial and industrial sites across the UK, and uses a large fleet of vehicles to collect waste from these sites.
16. The appellant says that the appeal site is used to service and repair vehicles which are used in conjunction with the business. He says drivers are required to carry out daily checks of their vehicle, which can take place at the appeal site (although these checks can also be carried out informally elsewhere). The site is also said to be used for more substantive vehicle repair and servicing, as and when things go wrong with any of the company vehicles.
17. Notwithstanding this contention, there appears to be nowhere within the appeal site where tools or equipment which are typically needed in conjunction with a vehicle repair and servicing site, could be stored, whether now or before the EN

was issued. Indeed, whilst the use is supposedly ongoing, when I visited, the site was entirely vacant. It is therefore unclear where or how any substantive servicing or repairs can take place on the site. Moreover, despite indicating that servicing records, staff records and invoices for servicing and repairs are kept by the company, no documentary evidence has been presented by the appellant to show any servicing or repair history within the appeal site. I am unclear why this documentation would not have been provided as part of the appellant's evidence if it would support his case.

18. Ms Maskell, a local resident who lives in a flat directly overlooking the site and who gave evidence on oath, says she has never seen the site being used for the service or repair of vehicles. Instead, she says the site appears to be used to park waste vehicles associated with the appellant's business. Her testimony is that vehicles are routinely parked within the site overnight, with most then exiting the site early in the morning. She further highlighted that vehicles come and go from the site between 6am and 11pm, causing substantial disturbance due to noise from the entrance gates being opened and closed, and loud revving of engines.
19. Photos appear to support Ms Maskell's evidence, with the site shown to be regularly occupied by large numbers of parked waste vehicles, often late at night. These vehicles are branded with Swift Waste Management's company logo, and are shown storing varying types of waste. In many of these photos, there appears to be no one present on site, which is unusual if the site is being used for servicing or repairs as claimed, as you would generally expect to see vehicle drivers or a mechanic present for such works. As part of their investigation, site visits by the Council also found waste vehicles being parked onsite, with no suggestion of any vehicle repair or servicing taking place.
20. It is also worth highlighting that between 2017 and 2019, the appeal site was used as a construction compound in conjunction with a neighbouring development. The Council also says local residents have indicated that the appeal site had been empty for a number of years before the appellant started using the site, which was understood to be in or around December 2021. Whilst this apparent break in any vehicle repair/servicing use is not a determinative factor in my findings, it nonetheless adds credence to the suggestion that a new use of the site began when the appellant acquired the site.
21. Bringing these factors together, aside from the appellant's testimony, there is very little evidence before me to corroborate his claim that the site is solely used for vehicle repairs and servicing. Even if some element of servicing or repair does take place at times, the evidence before me overwhelmingly points towards the site being used to park waste vehicles.
22. The appellant has therefore not demonstrated, on the balance of probability, that a waste management operation with associated parking had not taken place within the appeal site before the EN was issued.

Stationing of Caravan

23. The appellant contends that the caravan situated within the appeal site has only ever been used for the welfare needs of an onsite manager, employed in conjunction with the servicing and repair of company vehicles. The onsite manager is said to be needed round the clock to ensure proper security and surveillance of vehicles. The appellant further contends that there are no

kitchen or sanitary facilities within the caravan, which means it would not be capable of residential use.

24. Notwithstanding these arguments, photos show various activities taking place adjacent to the caravan, which are typically domestic in nature. These include children playing, a washing line being used to dry clothes, and people using a BBQ. These activities are indicative of a residential use of the caravan, rather than a security office. Ms Maskell says local residents have witnessed the same man routinely occupying the caravan overnight, and she also highlighted that an onsite workman referenced "the man sleeping in the caravan" during a conversation with her. When considered alongside the other signs of personal use, this behaviour again points towards a domestic use of the caravan.
25. The caravan had been removed from site just before the inquiry, so I was unable to see inside. However, even if I accept the appellant's suggestion that the caravan has no kitchen or sanitary facilities, photos show a portable toilet present on site. The BBQ seen next to the caravan would also provide the means to cook. These would both help facilitate a residential use of the caravan, even in the absence of internal facilities.
26. On the available evidence, use of the caravan therefore appears to have gone beyond a site or security office, and instead appears to have been used for residential purposes. Once again, I must therefore conclude that the MCU, insofar as it relates to the stationing of a caravan for residential use, had occurred at the time the EN was issued.
27. I have therefore found that both elements of the alleged mixed-use have occurred. The characteristics of this mixed-use are materially different to the former use of the site, irrespective of whether it was previously used for vehicle repair and servicing or had a nil use. In turn, the evidence before me demonstrates that a MCU has occurred, as alleged by the Council. The appeal on ground (b) therefore fails.

APPEAL ON GROUND D

28. In terms of the ground (d) appeal, the appellant contends that, as at the date the EN was issued, no enforcement action could be taken in respect of the matters alleged. As with the appeal on ground (b), planning merits are not relevant to the outcome of this ground. The burden again falls on the appellant to demonstrate, on the balance of probability, that the alleged MCU was immune from enforcement at the date the EN was issued.

Main Issue

29. The main issue with regards to the appeal on ground (d) is whether the matters alleged in the EN were immune from enforcement at the time the EN was issued.

Reasons

30. As per s171B of the 1990 Act, to succeed on this ground with regards to the alleged MCU, the appellant would need to demonstrate that the mixed use comprising a waste management operation with associated parking and the stationing of a caravan for residential use, had subsisted continuously for a period of ten years before the EN was issued.

31. Nonetheless, the appellant's principal argument on this ground is that a vehicle repair and servicing business has continued to operate within the appeal site for a period in excess of ten years. However, this is not what is alleged in the notice, and so does not help the appellant's case. Nothing has been presented by the appellant to demonstrate that either the waste management operation, or the stationing of a caravan for residential use, has been ongoing for any such length of time.
32. As the EN was issued on 28 June 2022, the alleged mixed use would need to have commenced on or before 28 June 2012, and subsisted continuously since this time. There is nothing before me to suggest this is the case. The appellant has therefore not demonstrated, on the balance of probability, that the alleged MCU had subsisted continuously for a period of ten years prior to the date of the EN. The appeal on ground (d) therefore fails.

Other Matters

33. Whilst not mentioned during the inquiry, the appellant says in the appeal form that the caravan is not affixed to any one place for more than 28 days in a year, and that it therefore does not constitute development. Whilst no appeal on ground (c) has been brought, this is effectively a ground (c) argument, being that the matters alleged would not constitute a breach of planning control. Whilst not clear, it is possible that the appellant is alluding to permitted development rights relating to the temporary use of land.
34. Nonetheless, photographs show the caravan in the same location from 21 March 2022 up until the date of the EN in June 2022, with numerous photos showing the caravan in the same location throughout this intervening period. On the available evidence, it therefore appears that the caravan had been stationed in the same place for over three months.
35. Moreover, even if the caravan had been moved around the appeal site during this time, it would still have been stationed within the same planning unit throughout this time. The site as a whole would therefore still have been used for a mixed use, including for residential purposes, on an apparently permanent basis. As with grounds (b) and (d), the burden on a ground (c) appeal falls on the appellant to demonstrate their case, again on the balance of probability. Given the scant evidence presented on this point, the appellant has not discharged this burden.
36. The Council has suggested that any historic use of the site for vehicle repair and servicing may have been abandoned, meaning the site had a nil use prior to the alleged MCU. However, as this issue is not determinative of my conclusions on either ground of appeal, I make no finding as to whether the former use of the site has been abandoned. Indeed, whilst the requirements of the EN require the alleged mixed use to cease, it is not within my remit to determine the site's former lawful use, or how the site can lawfully be used following compliance with the requirements.

Conclusion

37. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and variations as set out below.

Formal Decision

38. It is directed that the enforcement notice is corrected by:

- (a) substituting the postcode "E5 9BW" in paragraph 2 of the notice with "E5 8TA";
- (b) substituting paragraph 3 with the following new paragraph 3:

3 THE BREACH OF PLANNING CONTROL ALLEGED

Without planning permission, a material change of use of the land to a mixed-use comprising a waste management operation with associated parking and the stationing of a caravan for residential use.

and varied by:

- (c) substituting requirements 1, 2 and 3 of paragraph 5 with the following new requirements:
 - 1. Cease the use of the land as a mixed use comprising a waste management operation with associated parking and the stationing of a caravan for residential use.
 - 2. Remove all fixtures, fittings and equipment, including all motor vehicles, facilitating the use of the land for a waste management operation and associated parking.
 - 3. Remove all fixtures, fittings and equipment facilitating the use of the land for the stationing of a caravan for residential use.

39. Subject to these corrections and variations, the appeal is dismissed and the enforcement notice is upheld.

James Blackwell

INSPECTOR

DOCUMENTS SUBMITTED AT INQUIRY

1. HM Land Registry Title Documents for LN92003 (16 and 18 Rossendale Street)
2. Letter from Isaac Leibowitz dated 28 July 2022
3. Appellant Opening Statement
4. Council closing submissions

APPEARANCES

FOR THE APPELLANT

1. Isaac Leibowitz (Agent)
2. Ben Weberman (Appellant)

FOR THE COUNCIL

1. Angelica Rokad (Counsel)
2. Ryan Pinkett (Planning Enforcement Officer)

INTERESTED PERSONS

1. Victoria Maskell (Local Resident)