



Appeal Decision

Site visit made on 1 May 2024

by H Davies MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 May 2024

Appeal Ref: APP/P4605/C/23/3331002

989-991 Tyburn Road, Birmingham, B24 0TJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) (the Act).
 - The appeal is made by Mr S A Hassan against an enforcement notice issued by Birmingham City Council.
 - The notice was issued on 6 September 2023.
 - The breach of planning control as alleged in the notice is, without planning permission, the unauthorised change of use of the premises to car wash business.
 - The requirements of the notice are to:
 - (i) Cease the unauthorised use of the Premises as a car wash and valeting business; and
 - (ii) Remove all fixtures, fittings and signage associated with the unauthorised use; and
 - (iii) Remove all demolished building materials and rubble from the Premises arising from compliance with requirement (i) and (ii) above.
 - The period for compliance with the requirements is 2 months.
 - The appeal is proceeding on the ground set out in section 174(2)(g) of the Act.
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Decision

1. It is directed that the enforcement notice is corrected as follows:
 - In section 5, at requirement (iii), delete the words 'demolished building materials and rubble' and replace them with the word 'materials and items'.
2. Subject to this correction the appeal is dismissed and the enforcement notice is upheld.

The Notice

3. I have a duty to get the notice in order and s176(1) of the Act grants powers to (a) correct any defect, error or misdescription in the enforcement notice, and/or (b) vary the terms of the notice, provided it would not result in injustice to the appellant or the Council. The wording of the notice is reasonably clear, but a correction would improve clarity without fundamentally changing the notice or its requirements.
4. Requirement (iii) refers to removal of demolished building materials and rubble. However, this seems to be a simple mistake as requirements (i) and (ii) do not relate to demolition. Requirement (iii) can be corrected to just refer to the removal of materials and items arising from compliance with requirements (i) and (ii). I am satisfied that I can make this correction, as set out in the decision, without causing injustice.

Preliminary Matters

5. The Council identified the unauthorised change of use in August 2021. I am informed that planning permission for the use of the site as a car wash and valeting business was refused under two applications, in 2021 and 2022 (ref 2021/08187/PA and 2022/04346/PA). A subsequent appeal was dismissed in March 2023 (ref APP/P4605/W/22/3306478). Another application (ref 2023/06031/PA) was submitted but not validated as the fee was not paid. A further application (ref 2023/06429/PA) was submitted after the enforcement notice was issued and the Council exercised its powers under Section 70c of the Act to decline to determine it.

The appellant has provided outline information on the application which the Council declined to determine, but full details of the proposed revised scheme are not before me. The revisions include proposals to operate on a booking only system in an attempt to overcome issues raised regarding highway safety. I note from my site visit that the frontage signs indicate the business offers hand car washing, detailing and valeting. A sign on the gate indicates 'booking only'. However, at the time of my site visit the gate was open, there was nothing to prevent vehicles from just driving in off the road, and the booking only sign was not readily visible before turning into the site.

6. Notwithstanding the above, this appeal relates to the development subject to the notice, not any changes to the development which may have taken place subsequently, nor any proposed future changes. More significantly, no appeal has been made on ground (a), which is that planning permission ought to be granted for the matters stated in the notice. Consequently, the planning merits of the development, including some support from neighbours, are not for consideration under this appeal. It is not open to me to grant planning permission for the development subject to this notice, or any revised version of the development.

The appeal on ground (g)

7. This ground of appeal is that any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed. The notice specifies a time for compliance of 2 months after the notice takes effect.
8. The appellant states that they require additional time to allow them to resubmit an application, seeking to overcome previous reasons for refusal, and await determination of the application. In an email dated October 2023, they suggested that 4 months would be sufficient.
9. The appellant has appealed on the sole ground of seeking to secure more time to resolve the breach, through gaining permission for an amended scheme. At the time of this decision, it is almost 7 months on from the email requesting 4 months of extra time, and close to 8 months since the notice was issued. I have no evidence to suggest that there is any reason why ongoing efforts could not have been made to resolve the breach in that time. As this appeal is only on ground (g), the appellant has not been waiting for the outcome of any other aspect of an appeal, such as planning permission under an appeal on ground (a), or lesser measures under an appeal on ground (f). In addition, I have no evidence to suggest that there is a current valid planning application for a revised scheme under active consideration.

10. In the reasons for issuing the notice, the Council have clearly set out the harm they say is caused by the unauthorised change of use. I have been presented with no substantive evidence which would lead me to reach a different conclusion. My site visit confirmed that the road from which the site is accessed is very busy. Given the identified harm, particularly the possibility of a detrimental impact on highway safety, a prompt resolution to the breach is needed. The nature of the business and the fixtures and fittings on site, mean a period of 2 months would be sufficient to comply with the requirements, as corrected.
11. Taking account of the above factors, I conclude that the period for compliance with the notice is reasonable. There is no justification to extend it.

Conclusion

12. I conclude that the appeal on ground (g) fails. I shall correct the requirements of the enforcement notice, as set out in the decision, prior to upholding it.

H Davies

INSPECTOR