



Appeal Decision

Site visit made on 16 April 2024

by S A Hanson BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date 20 May 2024

Appeal Ref: APP/J0350/C/23/3323149

26 Lake Avenue, Slough SL1 3BZ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mrs Afshan Chaudhry against an enforcement notice issued by Slough Borough Council.
 - The notice was issued on 20 April 2023.
 - 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 of residential and for the repairing and servicing of motor vehicles, and associated storage.
 - The requirements of the notice are to: 1. Cease the use of the Land for the carrying out of repairs and servicing to motor vehicles and storage of items associated with this use. 2. Remove all metal scrap, motor vehicles not kept for the domestic use by occupants of the dwellings on the land, car parts, engines, trim, tires [sic] and waste arising from the repairing/servicing of motor vehicles from the land.
 - The period for compliance with the requirements is 3 (three) calendar months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (f) of the Town and Country Planning Act 1990 (as amended) (the Act). 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 notice be varied by deleting the requirements under paragraph 5 and substituting them with:
 1. Cease the mixed use of the land for residential and for the repairing and servicing of motor vehicles, and storage associated with the mixed use.
 2. Remove from the land all scrap metal, motor vehicles, car parts, engines, trim, tyres and waste associated with the mixed use of the land.
2. Subject to the variations, the appeal is dismissed and enforcement notice is upheld.

The notice

3. It is important for me to get the notice right where I can and in this case that means some amendments to the steps for compliance. It is open for me to vary and/or correct the notice in accordance with my powers under section 176(1)(a) of the Act. The requirements of a notice should be consistent with the breach of planning control alleged and follow logically from the allegation regarding what a notice may require under s173 of the Act to remedy the breach of planning control.

4. For this reason, the notice would be more precise if it were to require the cessation of the mixed use. The appellant could then rely on the provision of section 57(4) of the Act, which states that, once an enforcement notice has been complied with, planning permission is not required for its use for the purpose for which it could lawfully have been used if the development had not been carried out. It follows that the terms of the requirements at step 2 is varied too. By making these variations, I consider that there will be no injustice to either party.

The appeal on Ground (b) and Ground (c)

5. There is overlap in the arguments on grounds (b) and (c). Consequently, it seems that the sensible way to approach these grounds is to deal with them together. The planning merits of the use are not relevant, and they are not an issue for me to consider in the context of an appeal under these legal grounds. I must examine the submitted factual evidence, the history and planning status of the site in question and apply relevant law or judicial authority to the circumstances of this case.
6. Section 174(2)(b) is worded in the past tense and the question is whether the alleged breach had occurred by the date of issue of the notice. It is therefore for the appellant to demonstrate under their appeal on ground (b) that the matters alleged had not occurred by the material date.
7. In pursuing an appeal on ground (c), the onus firmly rests with the appellant to show that, on the balance of probabilities, the matters alleged, if they occurred, do not constitute a breach of planning control.
8. Repairing and servicing of vehicles are said to have commenced around 2018 by the appellant's husband, Mr Cheema, operating under the name I.C. Autos with business administration undertaken by the appellant. From the Council's photographs taken in July 2022 and February and March 2023 and the evidence from the appellant, there is no dispute that the land has been used for the repairing and servicing of vehicles and the storage of items associated with this use.
9. The gist of the appellant's case is that the use is incidental to the residential use of the appeal property (No. 26) being similar to repairing vehicles as a hobby. This is because the appellant claims that most of the work undertaken is on vehicles belonging to family members or friends. There has been no adaptation of the planning unit to accommodate the business and the land remains residential in all respects. It is also claimed that there is no difference in the work carried out to that which might be undertaken in any other domestic garage by a car owner with the necessary knowledge and hand tools to service and repair a vehicle. Accordingly, the use is deemed to be incidental to the residential use of the land, but they conclude that if what is alleged is deemed to be a change of use, that use is not development as defined by s55(1) of the Act because it is not material.
10. Section 55(1) of the Act includes in the definition of the word 'development' the making of any material change in the use of any building or other land (hereafter abbreviated as 'MCU'). The concept of an MCU is not defined in any statute or statutory instrument; however, it is linked to the significance of a change and the resulting impact on the use of land. The starting point for analysis is to decide whether or not, as a matter of fact and degree, the

character and nature of the alleged use is materially different from the residential use of the land. It is necessary to consider both what happens on the land and its impact off the land when deciding whether the character of the use has changed. It is a question of fact and degree in each individual case.

11. Section 55(2) of the Act contains specific exclusions from the definition of development, including s55(2)(d), which excludes uses on a scale and nature incidental to the reasonable enjoyment by an occupant of the normal residential use of the buildings and land, which comprise the dwellinghouse and its curtilage. Pertinent to this appeal, this means that where a use is considered to be incidental to the enjoyment of the dwellinghouse, then it will fall outside the definition of development and thus not require planning permission. It is therefore necessary for me to assess whether there has been a material change in the character of the residential use of the land as alleged.
12. No. 26 is a semi-detached dwellinghouse in a residential street. There is a shared drive between it and No. 24 and two domestic outbuildings positioned along the rear boundary. The yard area to the rear of the dwellinghouse is devoid of soft landscaping and is covered with hardstanding which is stained with what appears to be engine oil. The outdoor area provides space to the side and rear to park several vehicles. It is also said to provide an area where domestic activities take place such as a play area for the children and an area to hang washing out to dry.
13. While there was no mechanical activity occurring at the time of my visit, the Council's photographs taken in the time leading up to issuing the notice show several different vehicles parked at the appeal site, in the garage workshop, along the narrow access which runs between the houses and in the yard to the rear of the house. The photographs also show vehicle parts, oil drums, trolley jacks, tools and equipment both within and surrounding the garage. All of which are typically associated with vehicle repairs and servicing.
14. There are no signs of specialist equipment, such as hydraulic lifts associated with the repair or servicing of vehicles. There is no ramp or pit, and the garage is said to have only single-phase electricity which is not powerful enough for lifting equipment. Nevertheless, the mere absence of such equipment does not indicate that vehicle maintenance on a commercial level is not carried out. Indeed, the quantum of equipment displayed in the photographs suggests to me that the use is beyond that of a 'hobby' and some of the photographs show vehicles being worked on. The appellant confirms that some vehicles belong to customers and others, they say, belong to family members or friends.
15. From the evidence presented, and although they show only a snapshot in time, the photographs on three separate occasions indicate to me that the character of the site has changed. The residential use of the land is no longer the primary use. The introduction of the vehicle repair activity has resulted in a change in the use of the outbuilding and outdoor space given the appearance, configuration and layout. The commercial part of the mixed use of the land has an urbanised industrial appearance which is materially different from the private outdoor space usually associated with the residential use of the property.
16. Even with an absence of powerful tools, noise will be generated from, amongst other things, the use of hand-held tools and the revving and running of car engines and that would likely cause disturbance which could occur over lengthy

periods of time. Moreover, this type of noise disturbance would not be typical of the residential environment and those exposed to it would likely experience its presence as more intruding in an environment where people would normally expect to have a reasonable degree of peace and quiet. This is particularly so given the proximity of neighbours to the site both to the sides and the rear.

17. The nature of the vehicle repairs and servicing and the level of operation would generate an appreciable increase in vehicle and pedestrian movements to and from the site by customers delivering and collecting their vehicles, and from deliveries of parts and collection of waste. The frequency and number of comings and goings would have a materially different off-site effect to the amount of pedestrian and vehicle movements that would normally be associated with a dwellinghouse occupied by a family. I appreciate that there is a scrap yard at one end and a Gurdwara at the other and reference is made to car sales operating in the same street. However, I have not been provided with any evidence to demonstrate how their presence effects the levels of traffic movements in the vicinity.
18. Around 80% of the work is now claimed to be undertaken away from the appeal site because of the business becoming a mobile service operating from a van. Consequently, work undertaken at the appeal site is reported as involving no more than four vehicles per week and of those, most are claimed to be vehicles belonging to family members or neighbours. However, there is no cogent evidence to support this.
19. Nevertheless, while the level of activity at the appeal site may have reduced, I consider that working on up to four vehicles a week is far from an occasional activity and the use remains above and beyond a level of that one might accept would occur and be incidental to a domestic residence in a residential street. Notwithstanding this, whether the level of activity has reduced, the notice attacks the alleged breach of planning control leading up to the issuing of the notice.
20. On the balance of probabilities, I find that the nature and scale of the alleged land-use is something much more than a simple incidental activity which is domestic in scale or is a home-based hobby and functionally related to the primary residential use of the appeal site. In my assessment, there are two distinct uses taking place but there is not sufficient physical or functional separation between the two uses to enable a smaller planning unit to be identified. The introduction of vehicle repair and servicing activities in this compact residential setting has resulted in a definable change in the character of the land with two primary uses existing within the same planning unit, where one is not incidental to the other.
21. In considering the evidence, I conclude that the appellant has not discharged the necessary burden of proof to demonstrate that, on the balance of probabilities, the matters stated in the notice which give rise to the alleged breach of planning control have not occurred, and do not constitute a breach of planning control. Overall, I conclude that, as a matter of fact and degree, the change in the use of the land falls within the scope of development described in s55(1) of the Act. Express planning permission is required for this change, and it has not been obtained.
22. The appeal on grounds (b) and (c) must therefore fail.

The appeal on Ground (f)

23. The basis for an appeal on ground (f) is that the steps required by the notice to be taken exceed what is necessary to remedy any breach of planning control or any injury to amenity. For the appeal on ground (f) to succeed, the appellant must propose alternative steps which would remedy the breach.
24. The appellant argues that the requirement to stop all trading activities from the planning unit, no matter how minor they may be, is excessive because there must be a point at which some vehicle repairs and servicing is so minor as not to be a material change of use. There is a suggestion that such lesser steps could include restricting the hours of business or number of vehicles.
25. Since the amended notice requires the cessation of the mixed use of the land, the purpose of the notice is to remedy the breach of planning control by discontinuing the unauthorised use and removing all items associated with that use. The suggested lesser steps would not remedy the breach.
26. The use of the site for incidental or ancillary purposes is entirely feasible and reasonable with one caveat that an essential link exists between the latter and the residential planning unit and the requirements of the notice have been varied to reflect this right. By complying with the notice, the lawful use of the land would remain and uses incidental to the enjoyment of the dwellinghouse would be available to the occupants. Beyond this, there are no lesser steps that have been advanced and none which appear obvious that would remedy the breach as alleged.
27. Therefore, the appeal on ground (f) fails.

S A Hanson
INSPECTOR