



Appeal Decision

Inquiry held on 17 and 18 April 2024

Site visit made on 18 April 2024

by Chris Baxter BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th May 2024

Appeal Ref: APP/D3125/C/22/3313368

Land at Home Farm, Mount Skippett, Ramsden, Oxfordshire OX7 3AP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (the Act).
 - The appeal is made by Mr Jayson Legard of Legard and Cashell Holdings Ltd against an enforcement notice issued by West Oxfordshire District Council.
 - The notice was issued on 28 November 2022.
 - The breach of planning control as alleged in the notice is without planning permission a material change of use of the Land from a taxi business with ancillary car repairs to a mixed use of vehicle car servicing and repairs and vehicle sales.
 - The requirements of the notice are to:
 - (1) Cease use of any part of the Site for the display or sale of vehicles;
 - (2) Cease use of any part of the Site for the servicing or repair of vehicles;
 - (3) Cease use of any part of the Site for storage of vehicles and vehicle parts.
 - The periods for compliance with the requirements are 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(c), (d), (f) and (g) of the Act.
-

Decision

1. It is directed that the enforcement notice is corrected and varied by:
 - In section 3, deleting the words 'from a taxi business with ancillary car repairs'.
 - In section 5, delete the words:
 - (1) Cease use of any part of the Site for the display or sale of vehicles;
 - (2) Cease use of any part of the Site for the servicing or repair of vehicles;
 - (3) Cease use of any part of the Site for storage of vehicles and vehicle parts.

and substitute with:

 - (1) Cease use of the Site for mixed use of vehicle car servicing and repairs and vehicle sales.
2. Subject to the corrections and variations, the appeal is dismissed and the enforcement notice is upheld.

Applications for costs

3. An application for costs was made by the appellant, Mr Legard, against West Oxfordshire District Council. This application is the subject of a separate Decision.

The Enforcement Notice

4. Section 176(1) of the Act provides a wide-ranging power to correct or vary the terms of an enforcement notice provided that it would not result in injustice to the parties.
5. Representations were made at the Inquiry as to whether the previous use of the site was a taxi business with ancillary car repairs. A notice alleging a material change of use need not recite the previous use. I have therefore deleted reference to the previous use in the alleged breach of planning control of the notice.
6. The requirements are drafted to require separate components of the mixed use to cease. However, the notice does not allege a breach of separate uses. I have therefore corrected the notice so the requirements match the breach for the mixed use of vehicle car servicing and repairs and vehicle sales to cease.
7. I am satisfied that no injustice to the appellant or the Council would arise by me correcting and varying the notice in terms I have set out in paragraph one above.

Ground (c)

8. An appeal on this ground is a claim that the matters alleged in the notice, if they occurred, do not constitute a breach of planning control. The burden of proof falls on the appellant and the relevant test of the evidence is on the balance of probabilities.
9. There is no dispute that the change of use to the current use was a "material" one, thereby constituting development as defined at section 55 of the Act which requires planning permission. The carrying out of development without the required planning permission constitutes a breach of planning control. No compelling evidence has been presented to establish that the alleged use benefits from any planning permission. Consequently, the appellant has failed to demonstrate that the alleged mixed use of vehicle car servicing and repairs and vehicle sales is not a breach of planning control and therefore the appeal on ground (c) fails.

Ground (d)

10. In order for the appeal on ground (d) to succeed it has to be shown that at the time the notice was issued it was too late for enforcement action to be taken. The burden of proof is on the appellant and the relevant test is the balance of probability. If the local planning authority has no evidence itself to contradict or otherwise make the appellant's version of events less than probable, an appeal on ground (d) can succeed, provided that the appellant's evidence alone is sufficiently precise and unambiguous.
11. With regard to use of land, section 171B(3) of the Act states that no enforcement action may be taken after the end of the period of 10 years beginning with the date of the breach. Therefore, in this case, in order to be lawful, the alleged use must have commenced at least 10 years before the date of the notice and continued without any significant interruption thereafter for at least a 10-year period of time.
12. At the Inquiry I was presented with a copy of West Oxfordshire District Council – Register of Local Land Charges document. This document detailed that in 1978,

planning permission was granted at the appeal site for a vehicle hire business, together with use of land and buildings for the purpose of office accommodation, service workshops, parts store and vehicle inspection ramps in connection with the same business. The appellant also states that business rates record indicate that the site has been used as a workshop since 2005. However, use as a vehicle hire business and subsequently as a workshop are not the same use as the current mixed use alleged in the notice. These matters are not compelling evidence indicating that the site has been in a mix use of vehicle car servicing and repairs and vehicle sales for a continuous period of 10-years.

13. The appellant's submitted evidence states that between the years of 1997 and 2010 there were two operators of car repair sales businesses at the appeal site. It was the appellant's witness, Mr Grantham, sworn evidence that he worked as a mechanic for the owner of the land as part of a vehicle hire business and then in 1997 he himself took over the larger part of the vehicle hire business. Mr Grantham operated a vehicle repair and servicing business (Grantham Motor Services) and a vehicle hire business (M&W Grantham Hire) from the site, stating that Grantham Motor Services ceased operating by around 2009/2010. I heard from Mr Grantham that there was sale of vehicles from the site up to 2010, most of which were done by word of mouth although minimal information was provided in relation to the number of vehicles sold or the frequency of vehicle sales. Limited evidence has been provided detailing that a vehicle repair and servicing business and a vehicle sales business operated as a part of a mixed use from the site prior to 2010.
14. At the Inquiry, I heard evidence that DC Automotive started trading from the site from 2010, initially as a Sole Trader and then as a Limited Company from April 2012 with Companies House (CH) records providing confirmation. The appellant's second witness, Mr Cashell, stated at the Inquiry that the CH classification for DC Automotive was for 'maintenance and repair of motor vehicles'. However, that description of use is not the same as the current mixed use alleged in the notice as it does not include sales. Moreover, it is the **actual** use and activities that took place on the appeal site that are relevant rather than the classification category on the CH document.
15. The appellant has indicated that vehicles for sale have been stored on the site since 2010. A plan of the site¹ identified a parcel of land to the west where vehicles were parked to be sold. Historic aerial photographs show that this parcel of land within the site was not hard surfaced prior to October 2012 with the first images of vehicles being parked on this parcel of land being aerial photographs dated 2014 (less than 10 years before the notice was issued). The submitted aerial photographs dated prior to 2014 do show vehicles parked in other locations on the site, however each image is just a single moment in time which simply shows the positions of vehicles. They do not provide any evidence of sales activity. I also did not hear any substantial evidence from other witnesses clarifying the location of vehicles for sale on the site prior to 2014.
16. The appellant has submitted a number of documents which include British Telecom (BT) bills and invoices, customer invoices and receipts, Euro Car Parts invoices, supplier invoices, insurance documents, PayPal invoices and payment details, Trades Parts Specialist (TPS) invoices and Autotrader invoices. The BT documents are mostly invoices and bills dated from various months in 2011 and

¹ Appendix 3 of Council's Proof of Evidence – "PCN Response August 2021"

2012 and none of these documents detail the use of the appeal site. Customer invoices and receipts, all dated within 2011, appear to be related to vehicle repairs however, they do not indicate any sale of vehicles. The Euro Car Parts and suppliers' invoices are for vehicle parts with these invoices all dated in 2011. The submitted insurance documents are dated from 2012 to 2016 and there are no specifics within these documents detailing the use of the site. The TPS and PayPal invoices and payments are related to vehicle parts with these documents dated in the years of 2011 and 2012. The Autotrader documents, dated 2014, appears to relate to a trade subscription. These submitted documents indicate that vehicle repairs have been undertaken on the site, particularly around 2011 and 2012. The Autotrader subscription provides some indication that vehicle sales were perhaps occurring in 2014. These documents, however, do not provide convincing evidence that a mixed use, as described in the allegation, has taken place at the appeal site for a continuous period of over 10 years.

17. The appellant has provided internet archive (Wayback Machine) records which indicate that DC Automotive had a website in 2013 that advertised the sale of vehicles. There are also some 200 Facebook posts showing the sale of vehicles ranging from September 2012 to May 2022, although there are no Facebook posts showing the sale of vehicles in 2016 or from May 2022 to November 2022. The website and Facebook advertisements do not specifically state that the vehicle sales were undertaken from the appeal site although the photographs of the vehicles do appear to be taken at the site. This evidence seems to suggest, given the overall number of vehicles in the advertisements, that around two vehicles a month were advertised for sale. Nevertheless, there is limited evidence detailing vehicle sales in 2016 and between May 2022 and November 2022, and therefore a continuous period of vehicle sales for a period of 10 years has not been shown.
18. At the Inquiry, I heard from Mr Grantham that he operated M&W Grantham Hire from the appeal site until around February 2021. Mr Cashell explained the operations that have taken place by DC Automotive since arriving on the site from 2010. From what I have heard at the Inquiry as well as the submitted evidence, various operations have taken place at various times at the appeal site including elements of vehicle hire, vehicle repairs and servicing, and the sale of vehicles. However, the submitted information nor anything that I heard from the witnesses at the Inquiry provides me with compelling evidence that a mixed use of vehicle car servicing and repairs and vehicle sales, has been undertaken from the appeal site for a continuous 10-year period.
19. Accordingly, having regard to all the evidence before me, I find as a matter of fact and degree and on the balance of probability, that the appeal site has not been in a mixed use of vehicle car servicing and repairs and vehicle sales for more than 10 years before the notice was issued. Therefore, the appeal on ground (d) fails.

Ground (f)

20. An appeal on ground (f) is that requirements of the notice exceed what is necessary in order to remedy the breach of planning control or, as the case may be, the injury to amenity that is caused by the breach.
21. The appellant considers the requirements of the notice are excessive and that the removal of "for sale" signage from vehicles would be sufficient to change the appearance to be almost indiscernible from the authorised use.

22. The notice requires the cessation of the unauthorised mixed use of vehicle car servicing and repairs and vehicle sales. It is therefore clear that the purpose of the notice requirements falls within section 173(4)(a) of the Act – to remedy the breach of planning control. Anything less than the cessation of the use would not fully remedy the breach. Removing signage as suggested, without ceasing the use, would not remedy the breach of planning control.
23. Accordingly, I conclude that the notice requirements are not excessive and the appeal on ground (f) fails.

Ground (g)

24. Ground (g) is that the period for compliance with the notice falls short of what is reasonable. In this notice, the time to comply with the requirements is six months. The appellant seeks a time period of 24 months in which to comply with the requirements of the notice.
25. The appellant states that the business would need to be wound down and moved to another site, and to do this they would need to sell the existing site. Limited information has been provided in terms of the reasoning for why the unauthorised use has to be wound down, requiring the sale of the site. There is minimal evidence that convinces me that the requirements cannot be carried out within a six-month time period.
26. The appeal on ground (g) therefore fails.

Chris Baxter

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Mikael Armstrong – Planning Agent

He called

Martin Grantham

Former Business Owner

Derry Cashell

Business Owner

FOR THE LOCAL PLANNING AUTHORITY:

Mr Christian Hawley of Counsel

He called

Kelly Murray

Local Planning Authority

Documents submitted at the Inquiry:

1. West Oxfordshire District Council – Register of Local Land Charges document
2. Appellant's opening statement
3. Council's opening statement
4. Council's closing submissions
5. Appellant's closing submissions