
Appeal Decision

Site visit made on 10 July 2024

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 July 2024

Appeal Ref: APP/M5450/C/23/3315099

Land at 127 Waxwell Lane, Pinner HA5 3EP

- 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 appeal is made by Mr Shairaz Ahmad against an enforcement notice issued by the Council of the London Borough of Harrow.
 - The enforcement notice was issued on 19 December 2022.
 - The breach of planning control as alleged in the notice is, without planning permission, the material change of use of the Land to a mixed use of residential and storage and sale of motor vehicles (*sui generis*).
 - The requirements of the notice are:
 1. Cease the use of the Land for storage and sale of motor vehicles.
 2. Remove from the Land all vehicles, materials and paraphernalia associated with the unauthorised use of the Land for storage and sale of motor vehicles.
 3. Remove from the Land all material and debris arising from compliance with the requirements of the notice.
 4. For the avoidance of doubt the requirements of paragraphs 4.1 to 4.3 (inclusive) of the notice do not prevent the parking of motor vehicles on the Land where such motor vehicles are associated with and directly related to the residential use of the Land.
 - The period for compliance with the requirements is three (3) calendar months.
 - The appeal is proceeding on the grounds set out in section 174(2) (b) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, any appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
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Summary Decision: the appeal is dismissed and the notice is upheld subject to a variation as set out in the Formal Decision below

Procedural matters

1. As originally made, the appeal included an appeal on ground (f): namely, that that the requirements of the notice exceed what is necessary. The appellant's argument on this ground of appeal is only briefly stated on the appeal form but it is nonetheless apparent that it does not constitute an appeal on ground (f). If anything, it is an extension of the appeal made on ground (b) and I shall consider it under that ground. I will therefore not consider the appellant's appeal on ground (f) further.
2. The 'requirement' at paragraph 4.4 of the notice is not a requirement at all. It is an Informative. Whilst this Informative was no doubt helpful to the recipients of the notice, it cannot remain as a stand-alone requirement of an enforcement notice. I shall therefore vary the notice by deleting it entirely.

3. In its appeal statement, the Council contends that the lack of evidence provided by the appellant to support his appeal on ground (b) amounts to unreasonable behaviour on the part of the appellant. However, the Council has not made an application for costs against the appellant and leaves the award of costs to my discretion.
4. Inspectors do have the power to initiate an award of costs, be it against an appellant or a local planning authority. In this case, the evidence that I have relied upon to reach my decision was almost exclusively provided by the Council and/or in third party representations. I am inclined to agree with the Council that the lack of evidence provided by the appellant to support his case on ground (b) (and for that matter the appeal on ground (f)) does amount to unreasonable behaviour for the purposes of the Planning Practice Guidance (PPG).
5. However, in the absence of a formal application for costs, I have no evidence that the unreasonable behaviour of the appellant resulted in the Council incurring wasted or unnecessary expense. Consequently, on the evidence before me, the two elements required in the PPG for an award of costs are not present and an award of costs is therefore not justified. Moreover, it is no part of my remit to search for or to request evidence of wasted or unnecessary expense when that has not been provided through a formal application for costs.

The appeal on ground (b)

6. The ground of appeal is that, in respect of any breach of planning control that may be constituted by the matters stated in the notice, those matters have not occurred. An appeal on this ground is one of the 'legal' grounds of appeal, in which the burden of proof is on the appellant to show, on the balance of probability, that the matters alleged in the notice have not occurred.
7. The breach of planning control as alleged in the notice is, without planning permission, the material change of use of the land to a mixed use of residential and storage and sale of motor vehicles. The appellant confirms that he lives at the appeal property albeit, on the date on which the appeal was lodged, the property had been unoccupied for some months whilst it was being renovated. The residential element of mixed use is therefore present.
8. In his Final Comments, the appellant candidly admits that he does store cars at the appeal site. At the time of my site visit, there were six cars parked in the area to the rear of the appeal property that did not belong to the appellant. The storage element of mixed use is therefore present.
9. The appellant is, however, adamant that the sale of cars does not place at the appeal site but at his sales unit. The location of that sales unit has not been disclosed but the Council confirms that a company called Motormiles Ltd is registered at the appeal address. The photographs embedded in the Council's evidence, all taken on 22 June 2022, show numerous cars stored on the site but none have stickers or labels on them indicating that they are for sale. This was also the case with the six cars present on the appeal site at the time of my site visit, none of which had stickers or labels on them indicating that they are for sale. On first glance, this tends to support the appellant's case.

10. However, a very different story emerges from other evidence that is before me. The Council includes in its evidence extracts from the website for Motormiles Ltd that show three different vehicles (a SEAT Alhambra, a Ford Ranger and a TESLA Model X) advertised for sale. The advertisement includes the specifications for each vehicle and the sales price. The advertisements include photographs that clearly show these vehicles being parked in front of the appeal property. This is clear evidence that these vehicles are being sold/offered for sale from the appeal property rather than (or perhaps in addition to) the appellant's sales unit elsewhere.
11. The evidence of local residents tells a similar story. One resident corroborates the evidence of the Council that the website for Motormiles Ltd clearly shows cars photographed and on display for sale at the appeal site. This resident also recounts that car transporters have been photographed delivering cars to this address from companies specialising in the sale of motor vehicles, such as Cinch and BCA. In support of that evidence, the resident provides a copy of a photograph taken in August 2022 of car transporter bearing the Cinch logo, albeit it is not possible to discern from that photograph that the car transporter is on or parked in front of the appeal site itself.
12. Another local resident explains that vehicles are brought to the appeal site to be jet washed, vacuumed and cleaned. This is consistent with the photographs provided in the Council's evidence in which, without exception, all the vehicles visible are clean and in pristine condition. The same local resident also notes that potential buyers park their own vehicles on Waxwell Lane when viewing vehicles for sale. One local resident notes that potential buyers are more prevalent at the weekend.
13. The picture therefore emerges from this evidence that cars are transported to the appeal site where they are cleaned and prepared for sale on the Motormiles Ltd website. This would explain the absence of stickers and labels on the cars present at the time of the Council's visit in June 2022 and at the time of my site visit. This evidence tends to contradict the appellant's claim the vehicles are stored on the appeal site but then sold from his sales unit elsewhere. The sales element of the alleged mixed use is in place.
14. In this case, the limited evidence provided by the appellant is not sufficient to outweigh the evidence provided by the Council and by local residents. This evidence shows that the residential element, the storage element and the sales element of the mixed use are all in place as primary uses of the land. The mixed use of the single planning unit alleged in the notice has occurred.
15. I conclude that, on the balance of probability, that the matters alleged in the notice have occurred. Accordingly, the appeal on ground (b) fails.

The appeal on ground (g)

16. The ground of appeal is that the period for compliance specified in the notice falls short of what should reasonably be allowed. The period for compliance specified in the notice is three calendar months.
17. The appellant has provided no evidence to show why the requirements of the notice cannot be achieved with the period of compliance specified in the notice. In particular, I see no reason why the use of the land for storage and sale of motor vehicles cannot cease within that period.

18. The appellant has explained that his wife is suffering from a medical condition and is undergoing medical treatment. I note that the appellant's wife has also been served with a copy the enforcement notice but has not lodged an appeal in her own right, no doubt due to her illness. I do have sympathy for the appellant in the situation that he now finds himself in.
19. However, I have been provided with no evidence to show that the appellant's situation prevents compliance with the notice within the specified period. For example, I have been provided with no letters or reports from the medical practitioners caring for the appellant's wife that would explain why the appellant himself (as opposed to the appellant's wife) could not comply with the notice within the specified period.
20. I am satisfied that the period of compliance of three months specified in the notice is a proportionate response to the breach of planning control that has taken place. I therefore see no reason to extend that period for compliance. Accordingly, the appeal on ground (g) fails.

Conclusion

21. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice with a variation.

Formal Decision

22. It is directed that the enforcement notice is varied by:
- deleting paragraph 4.4 in its entirety
23. Subject to that variation, the appeal is dismissed and the enforcement notice is upheld.

Paul Freer
INSPECTOR