

Appeal Decisions

Inquiry held on 4 and 10 June 2024

Site visit made on 4 June 2024

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 August 2024

Appeal A: APP/E0345/C/24/3338517 & APP/E0345/C/24/3338518 Land at Norcot Road, Tilehurst, Reading RG30 6BU

The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.

- The appeals are made by Olivia & Ambra Property Development Ltd and Elantina Klosi against an enforcement notice issued by Reading Borough Council.
 - The notice was issued on 10 January 2024.
 - The breach of planning control as alleged in the notice is:
Without planning permission, the material change of use of the land from vehicle sales and associated garage workshop to a mixed use of (i) vehicle wash and valeting business (sui generis) involving operational development by the erection of (a) a waiting room, as shown black and annotated on the attached plan.
 - The requirements of the notice are:
 - (i) Cease to use of the land for vehicle washing;
 - (ii) Dismantle and remove the vehicle wash waiting room from the land;
 - (iii) Remove all plant, machinery & equipment for vehicle washing;
 - (iv) Remove all business advertisements from the land.
 - The period for compliance with the requirements is 6 months from the date this notice takes effect.
 - The appeals, which are identical, are proceeding on the ground set out in section 174(2) (d) of the Town and Country Planning Act 1990, as amended.
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Appeal B: APP/E0345/C/24/3338521 & APP/E0345/C/24/3338522 Land at Norcot Road, Tilehurst, Reading RG30 6BU

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Olivia & Ambra Property Development Ltd and Elantina Klosi against an enforcement notice issued by Reading Borough Council.
- The notice was issued on 10 January 2024.
- The breach of planning control as alleged in the notice is:
Without planning permission, the material change of use of the land from vehicle sales and associated garage workshop to a mixed use of vehicle bodyshop and spraying business with vehicle storage (sui generis), involving operational development by the erection of (a) a vehicle body spraying building, (b) a lean-to extension to the workshop garages, as shown edged black and annotated on the attached plan.
- The requirements of the notice are:
 - (i) Cease to use the land for vehicle bodywork repair and maintenance;
 - (ii) Cease to use the land for vehicle body paint spraying;
 - (iii) Cease to use the land for vehicle storage;
 - (iv) Dismantle and remove the vehicle paint spraying building from the land;
 - (v) Dismantle and remove the lean-to extension to the garage workshop from the land;
 - (vi) Remove all plant, machinery & equipment for vehicle bodywork & repair and vehicle body spraying from the land;

- (vii) Remove all vehicles and vehicle parts from the land;
 - (viii) Remove all business advertisements from the land.
 - The period for compliance with the requirements is 6 months from the date this notice takes effect.
 - The appeals, which are identical, are proceeding on the ground set out in section 174(2)(d) of the Town and Country Planning Act 1990, as amended.
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Formal Decisions

Appeal A

1. It is directed that point 3 of the Notice ('The matters which appear to constitute the breach of planning control') is deleted and substituted with the following wording:

'Without planning permission, the of use of the land, within the area shown edged black and annotated on the attached plan, as a vehicle wash and valeting business (sui generis) with the erection of an associated waiting room'.

Also, it is directed that requirement (i) of the enforcement notice has a minor typographical error, in that the word 'to' should, instead, read 'the'.
2. Subject to these corrections the appeal is dismissed and the enforcement notice is upheld.

Appeal B

3. It is directed that point 3 of the Notice ('The matters which appear to constitute the breach of planning control') is deleted and substituted with the following wording:

'Without planning permission, the erection of a spray booth building, and a lean-to extension to the garage workshop.'

Also, requirement (i) is deleted.
4. Subject to this correction the appeal is dismissed and the enforcement notice is upheld.

Application for Costs

5. An application for an award of costs was made by Reading Borough Council against Olivia and Ambra Property Development Ltd and Elantina Klosi. This application is the subject of a separate decision.

Background

6. No 20 Norcot Road, which various correspondence refers to, actually relates to the building currently used as a restaurant which flanks one side of the accessway off Norcot Road. There is obvious severance between this building and the land to the rear which accommodates the developments targeted by the enforcement notices. However, as the notices both refer to 'land at Norcot Road', I am satisfied that this adequately describes the said piece of land.
7. The use of the land for motor related activities goes back to 1961 and 1962 when two separate planning permissions were granted; the first (ref 9063) was for the erection of a motor showroom and a garage to the rear, and this was followed up with an approval (ref 9492) to erect a repair workshop to the rear of the site.

8. Although both permissions were subject to a series of conditions the main parties acknowledge that there is no indication that these were properly complied with. Nonetheless, the use of the land for car repairs and sales became established over time and, any associated irregularities would have acquired immunity from planning control.
9. It is accepted by both main parties that Building 1 (the subject of Appeal B) was occupied by Richard Moss who carried out the repair and restoration of motor vehicles relating to body repairs and their respraying between the years of 1988 and 2017. Similarly, Building 2 was occupied by Richard Moss' brother, Andy Moss, for general motor vehicle repairs from 1997 until 2017. It is also agreed that, in 2017, the car wash business commenced operations, and a small part of Building 2 was then demolished, thereby physically demarcating Building 2 from the Building 1 premises behind.
10. Richard de Souza purchased the land in December 2017, and then a new tenant, Mr G Hoxha sub-let the site, including both Buildings 1 and 2 and the various operations within the site including the car wash, vehicle body repairs and associated paint spraying.
11. The Council's case is that after the land was leased to Mr Hoxha in 2018, two physically and separate and distinct areas were occupied for substantially different and unrelated purposes, resulting in the sub-division of the planning unit. This view has clearly informed the wording of the allegations within the enforcement notice.
12. Prior to 2017 it would appear that the land was in a mixed use, primarily that of motor vehicle repairs with ancillary uses, which mainly operated from Buildings 1 and 2, which are not targeted by the enforcement notices, along with a car sales business which operated independently from the forecourt fronting Building 2. It is understood that the waiting room building was erected in 2022 and the spray booth, which sits adjacent to the site's rear boundary, was erected in 2023.
13. It is the appellants' case that both buildings and the immediate surrounding land have been used for Class B2 (General Industrial) purposes since at least 1997. The appellants have provided an appeal decision letter (APP/Q1445/C/12/2169597) from 2012 whereby the appointed Inspector considered that, as a valeting use, it could be carried out in any residential area *"without detriment to the amenity of that area and would therefore be a use falling within Use Class B1"*. Appeal decisions relate to the individual circumstances of the particular site at issue, are thereby fact sensitive and will obviously have informed the Inspector's findings.
14. Accordingly, being site specific, the Inspector's comments are not binding when considering subsequent appeals. I am not convinced that the washing and valeting facility here can be considered as a 'light industrial' operation (now falling within Class E) nor, despite the resultant noise emissions consequent upon the jet washing process and vacuum units, it cannot be termed as a general industrial (Class B2) process. Instead, I find that the said use, like the previous car sales business, is a sui generis operation.
15. In 2023 an application for a lawful development certificate (ref 231165/CLE) was received by the Council. This effectively claimed that the land in its entirety enjoyed Class B2 use rights, based on the use of the buildings to the rear of the site being used for the repair and restoration of motor vehicles, along with the car

wash operation. The Council, however, in its decision notice (ref 231165) of 20 December 2023, refused to issue the certificate applied for under s191 as it considered there was insufficient evidence to show, on the balance of probability, that the land amounted to a single planning unit which had been in Class B2 use for the requisite period of at least ten years prior to the date of the application.

16. The Council's decision was not appealed and, in January 2024, the Council saw it expedient to issue the enforcement notices the subject of the current appeals.

The Planning Unit

17. It is not reasonably possible to determine whether or not a material change of use of the land has taken place without the actual planning unit being identified. Once a planning unit has been established any significant change thereto may result in, or be associated with, a material change of use.
18. Both enforcement notices, with reference to their respective allegations, describe a material change of use having taken place from '*vehicle sales and associated garage workshop*'. This would suggest that the Council considered vehicle sales to be the primary use with vehicle repairs as a secondary or subsidiary operation.
19. The evidence adduced by the appellants' witnesses, who have historical knowledge of the site, indicates that the car sales operation was operated independently from the vehicle repair businesses, and there was no interaction. The area used for the former was accessed directly from Norcot Road whilst the workshops used by the Moss brothers were reached via Lemart Close to the rear. The latter, along with the element of associated on-site storage took up the majority of the planning unit.
20. It appears from old ordnance survey extracts that the buildings were once joined, but a mid-section was recently demolished to facilitate the car wash operation. Accordingly, Building 2 is now open-ended and effectively forms a shelter to accommodate the washing and valeting operations within.
21. On this basis there is little doubt that the car sales were not ancillary to the vehicle repair businesses. It was not functionally linked to the repair use nor dependent on it. Accordingly, given the more limited area in which the car sales business was located I would consider this to have been a secondary use, and one in its own right.
22. In light of the above I would consider that the primary use of the site is one involving general vehicle repairs along with associated storage and, with reference to the judgement in *Burdle & Williams v SSE & New Forest DC* [1972] 1 WLR 1207, I find that the wider site, which is split between the respective plans attached to the two enforcement notices, represents the planning unit in its entirety.

The Mansi principle

23. An enforcement notice should not affect any existing use rights. These include use rights which have accrued by way of immunity from planning control due to the passage of time, as I consider is the case here, given that the 1960s' planning permissions were seemingly not implemented in full accordance with their terms and conditions. This is known as the Mansi principle, founded on the judgement of *Mansi v Elstree Rural DC* [1964] 16 P&CR 153.

24. In effect, therefore, an enforcement notice should not be worded to prohibit lawful development after compliance and should be interpreted so far as is possible to avoid a conflict. Neither should a Council, when constructing an enforcement notice, divide up a planning unit artificially so as to achieve a more restrictive effect than would result from an enforcement notice directed at the planning unit as a whole. This was held in the judgement of *De Mulder v SSE* [1973] 25 P&CR 303 JPL 429, and the approach is exactly what has happened in the current case.
25. During Mr Lloyd's oral evidence, given on behalf of the Council, I asked him what he regarded as being the actual planning unit in this instance and whether he had factored in the Mansi principle and assessed any existing use rights. He responded that, in his view, the site contained several planning units, which included the restaurant. I remarked that this would explain why two separate enforcement notices were issued, and Mr Lloyd agreed, saying that the parts of the site ringed in the enforcement notices had undergone a material change of use, as specified in the notices, and appropriate action had been taken.
26. Given the legal implications I have outlined I must weigh up the validity of the enforcement notices and whether they can be corrected in accordance with my findings.

Matters concerning the Enforcement Notices

27. Under the provisions of section 176(1) of the 1990 Act as amended it is open to me to correct any defect, error or misdescription in the enforcement notice or to vary its terms if I am satisfied that the correction or variation will not cause any injustice. It is considered that the Courts interpret the power to correct a notice very widely and that the powers in s176(1) can extend to making significant changes to the terms of the notice so as to put it on a proper footing.
28. The Council has misinterpreted the land's existing use rights, to the point where it could be considered that the intention of the notice, the subject of Appeal B, is to extinguish the B2 use and, as explained, by virtue of the Mansi principle, such an approach is unlawful. In illustration it would not be possible to comply with requirement 2 of the notice
29. As the vehicle washing and valet washing use has encroached into the footprint of Building 2, within what was formerly Andy Moss' workshop, I am not of the view that the new site arrangement has result in an expansion of the Class B2 primary use, and the cessation of the car sales use, which tend to be passive in character - did not itself amount to a material change of use. Instead, the site's planning position has involved the cessation of one sui generis use and its replacement with another use, outside the parameters of the Use Classes Order, in a defined area of the site.
30. Whilst I have concluded that the commencement of the vehicle wash and valeting business has not affected the primary use of the site for vehicle repairs and associated activities a new secondary use has sprung up, but not to the point where it could be seen to challenge the predominance of the primary use. Nonetheless, a vehicle washing and valeting operation is essentially noisy in character due to the intensity of activity involved, quite different from that of a car sales use.
31. In my view the introduction of this secondary use in such circumstances, and within a defined area within the planning unit, has involved a material change in

- the use of the land from motor vehicle repairs (Class B2) to that of a mixed use for motor vehicle repairs and also a vehicle wash and valeting business.
32. There are, though, two clear breaches of planning control; first, the vehicle wash and valeting operation; and, second, the erection of the spray booth building, along with certain other operational development associated with both elements, and the enforcement notices correctly target the respective contraventions, setting aside the specified material changes of use.
33. The Inquiry heard that the Council had not enforced against the timber and polycarbonate roofing erected to form a shelter to facilitate the car wash use. It is not mentioned in the relevant notice's allegation, with the indication that it was erected in 2018 and, under the four year rule, would have acquired immunity from planning control. However, as the roofing is connected with the unauthorised use, under the *Murfitt* principle, it would still be vulnerable to enforcement action. I note the Council reserves the right to take further enforcement action in the future regarding this element and, as the expediency of such action and the decision to take it is a matter for the Council, I do not intend to interfere on this particular matter.
34. If I was to take the position that the enforcement notices were invalid and there should be one single (and simplified enforcement notice) ringing the whole planning unit and covering the breaches within, this approach would most likely only involve the Council subsequently issuing a new notice taking account of the actual breaches remaining. The substantive nature of the Council's remedial action would be the same with identical requirements save for the cessation of the vehicle bodywork repair and maintenance use which, as explained, would be an unlawful requirement.
35. Therefore, despite the planning unit as a whole being split between the two enforcement notices I shall assign the alleged breaches to the separate pockets of land edged black on the notices with the notices reworded in parts to ensure that the steps required for compliance are legally correct.
36. In the circumstances, I shall make the corrections necessary to put both enforcement notices on a sound footing.

Enforcement Notice, the subject of Appeal A

37. Point 3 of the Notice ('The matters which appear to constitute the breach of planning control') is deleted and substituted with the following wording:
- 'Without planning permission, the of use of the land, within the area shown edged black and annotated on the attached plan, as a vehicle wash and valeting business (sui generis) with the erection of an associated waiting room.
- Also, requirement (i) of the enforcement notice has a minor typographical error, in that the word 'to' should, instead, read 'the'.

Enforcement Notice, the subject of Appeal B

38. Point 3 of the Notice ('The matters which appear to constitute the breach of planning control') is deleted and substituted with the following wording:
- 'Without planning permission, operational development involving the erection of (a) a building for vehicle body spraying, and (b) a lean-to extension to the garage workshop, within the area edged black and annotated on the attached plan'.

Also, requirement (i) is deleted.

39. No injustice would be caused to either party by making these corrections.
Accordingly, I am remedying the said errors on both enforcement notices.

Appeals A & B

The Evidence

Appellants' witnesses

40. Statutory declarations were sworn and produced by various witnesses in support of the appellants' case, including Richard Moss, John Cassell of Cassell Welders Ltd which occupy a nearby unit, 32 Lemart Close, Richard de Souza and Ken Crookes who, as operations manager between 2007 and 2015, rented the forecourt for the display of vehicles. All persons' individual accounts are consistent with the site's planning history which I have already summarised.

Council's witness (David Lloyd)

41. Mr Lloyd, in referring to the noise nuisance resulting from the washing and valeting operation, mentioned that an abatement notice was served in 2023 by the Council's Trading Standards team. This, he said, showed that since 2017 there has been sufficient evidence to a change in the way the motor vehicle related uses have operated, but he acknowledged in evidence that there has been a lack of clarity as to how and why.

Interested party

42. A local objector, Mr Fairburn, who has lived in the same house beyond the rear of the site for the past 41 years, provided a written account of the the land's use and how it has changed in recent years. His son spoke at the Inquiry. on his behalf. Mention was made of a deviation from the site's historical usage, and 'excessive noise' from the car wash which, he said, operates 7 days per week, as opposed to the more passive previous car sales operation, and the paint booth which was erected in 2023. He submitted photographs which show the building sitting just beyond his garden fence and from which, he considers, there have been both fume and noise emissions.
43. He provided an account of complaints made to the Council since May 2018, when he first became aware of the car wash operation and its frequency, with up to fifteen vehicles cleaned per hour with the use of power washers and industrial vacuum cleaners. He also talked of a workshop draped in a black plastic membrane. He indicated that the demolition of two sides of Building 2 exacerbates the problem, and he has submitted a noise diary to an Environmental Health officer.

The appeals on ground (d)

44. An appeal on ground (d) is that, at the date the enforcement notice was issued, it was too late for the Council to take formal action as the development which constituted the breach of control – and which the appellant accepts as having occurred – had already acquired immunity from such in planning terms.
45. The immunity period for the vehicle washing and valeting business is ten years prior to the issue of the enforcement notice; in this instance, 10 January 2014, which is the material date. Accordingly, the appellants need to demonstrate that

the unauthorised change of use has occurred continuously since at least this date. Even if the associated operational development had acquired immunity as buildings or structures under the four year rule, which they clearly have not, they would still be caught by the *Murfitt* principal.

46. The onus is on the appellants to prove their case, with the burden of proof being on the balance of probabilities. In the absence of any appeal under ground (a) there is no deemed planning application (DPA) and I am unable to weigh up the planning merits and impacts of the developments enforced against. Accordingly, my decision has to be based solely on evidential fact and, where applicable, case law.

Conclusions

47. The appellants maintain that the land's use for B2 purposes, as claimed, enjoys immunity from planning enforcement action. However, from all the evidence adduced I have found that, from the early 1960's, the land, as a whole, was primarily used for general vehicle repairs and associated activities, along with an unrelated secondary use involving a car sales operation. It would seem that the uses' various components operated with a degree of stability throughout the passage of time, until when, in 2017, the land was sold and the new arrangement involving the commencement of a vehicle wash and valet service, along with the erection of a paint spray booth. These together brought about a change in the definable character of the use due to increased activity and perceptible noise disturbance along with odour emissions, as highlighted by the local objector, Mr Fairburn.
48. Accordingly, I have concluded that when the relatively passive car sales business ceased and the wash and valet operation, which effectively replaced it, began the change intensified the use of the land. The consequential noise and disturbance, along with the apparent odour emissions from the establishment of the new paint spray booth, were of such significant materiality as to amount to a material change in the use of the land.
49. Nonetheless, as explained, the land's Class B2 use rights lawfully remain and are safeguarded by way of the Mansi principle. The paint spraying of vehicles falls within Use Class B2. Had the appellants made an appeal under ground (a) a deemed application seeking planning permission for the spray booth's retention would have fallen to be determined. It would then have been open to me to assess whether planning permission should be granted, but subject to restrictive planning conditions so as to regulate the operation within and protect the living conditions of neighbouring occupiers. However, no such appeal was lodged.
50. As it is accepted by both parties that the vehicle washing and valeting operation only commenced in 2017, and the waiting room was only built in 2022, neither development satisfies the requisite immunity criteria and Appeal A cannot succeed.
51. Similarly, as the spray booth building was only erected in 2023, it does not have immunity from enforcement action. Further, as the appellants were unable to provide evidence to show that the lean-to extension attached to the workshop enjoyed immunity, Appeal B must also fail.
52. It is stipulated that the requirements of both enforcement notices are to be complied with in full within six months of this decision. The paint spray booth, as

it stands, is therefore set for removal. In light of my findings as to the site's Class B2 use rights, whether it might in future accommodate any paint spraying facility in accordance with the continued lawful use of Building 1 would have to be the subject of negotiation between the two main parties.

53. As neither appeal succeeds I shall therefore uphold both enforcement notices, but with corrections.

Timothy C King

INSPECTOR