



Appeal Decisions

Site Visit made on 9 October 2024

by **J Whitfield BA(Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 1 November 2024

Appeal A Ref: APP/J0350/C/21/3287977

Land at 42 and 44 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 Executor of Mr Sharif Mohammed (Deceased) against an enforcement notice issued by Slough Borough Council.
- The notice was issued on 27 October 2021.
- The breach of planning control as alleged in the notice is, without planning permission, the erection of a spray booth and material change of use of the site from Mixed Use (Class C3 single family dwellinghouse and storage and sale of used cars) (Unauthorised Use) to a sui generis use consisting of Class C3, storage and sale of used cars and commercial spraying ("Unauthorised Development").
- The requirements of the notice are:
 1. Cease the commercial use of the property for the spraying of motor vehicles.
 2. Remove all items in connection with the spraying of motor vehicles.
 3. Demolish the outbuilding (spraybooth) in its entirety as outlined in blue on the attached Plan.
 4. Erect a 1.8m high close boarded fence or imperforate wall between no.44 and no's 46 and 48.
 5. Remove from the land all materials, rubbish, debris, plant and machinery resulting from compliance with the above requirements.
- The period for compliance with the requirement is: 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (d), (f), (g) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with a correction and variations in the terms set out below in the Formal Decision.

Appeal B Ref: APP/J0350/W/22/3290331

42 Lake Avenue, Slough, Berkshire, SL1 3BZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
- The appeal is made by Mr Liaquat Ali Janjua against the decision of Slough Borough Council.
- The application Ref is P/05737/005.
- The development proposed is Retention of replacement spray booth/outbuilding (retrospective).

Summary of Decision: The appeal is dismissed.

The Notice

1. The notice is targeted against, in part, the erection of a spray booth. Section 5 of the notice requires the spray booth as outlined in blue on the attached plan to be demolished. However, the appellant indicates that the blue line does not

correspond with the precise footprint of the spray booth. On that basis, the appellant says the enforcement notice is invalid.

2. I saw from my site visit that, whilst the blue line broadly corresponds to the area where the spray booth is located, it does not accurately reflect the footprint of the building. Nonetheless, since the only operational development the notice is targeted at is the spray booth – a detached building, and it is clear which building the notice is directed against, there is no need for the requirement to identify the building to be removed by reference to the blue line. I can therefore correct the notice to remove that reference and doing so would not cause injustice to the appellant or the LPA.
3. The appellant also draws attention to the use of the terms in the notice of “unauthorised use”, “unauthorised development” and “unauthorised change of use”. I accept that they are used somewhat interchangeably and not entirely consistently. Indeed, the use of the term “unauthorised change of use” in the reasons for issuing the notice is not referred to anywhere else. However, I am satisfied that the use of those terms does not render the notice vague or uncertain. The notice is clear from its four corners that it alleges the erection of a spray booth and the material change of use to a mixed use of Class C3, storage and sale of used cars and commercial spraying. To that end, I am satisfied it meets the tests laid out in *Miller-Mead*¹. The notice is not therefore invalid.

Appeal A on ground (c)

4. An appeal on ground (c) is brought on the basis that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, that those matters do not constitute a breach of planning control.
5. The notice alleges a material change of use of the Land to a mixed use, comprising a dwellinghouse, use for the storage and sale of used cars, and commercial spraying. The concept of a mixed use is two or more primary uses existing within the same planning unit. One is not incidental to the other.
6. The parties agree that the Land comprises a single planning unit. Having regard to the relevant tests in *Burdle*², I am satisfied the Land comprises a single unit of occupation and there are no smaller areas which are physically or functionally separate.
7. The appellant’s case is that the spraying of cars has taken place but that it is ancillary to the storage and sale of used cars and thus a material change of use has not taken place. On that basis, the alleged breach is not a breach of planning control, since it does not amount to development for which planning permission is required.
8. A certificate of lawfulness (LDC) was issued on 1 March 1994 which established that, on 5 October 1993, the use of the land for the storage and sale of used cars up to a maximum of eight cars at any time with minor repairs to cars associated with the car sales business was lawful.
9. The LPA states that a letter was included with the LDC application to confirm that there will be no spraying on site and thus the use of the land for spraying

¹ *Miller Mead v MHLG* [1963] 1 A11 ER 459

² *Burdle & Williams v SSE & New Forest DC* [1972] 1 WLR 1207

would contravene the conditions of the approval of March 1994. However, LDC's are not subject to conditions. They solely describe the use considered to be lawful. There is nothing in the LDC which states the spraying of vehicles would not have been lawful.

10. The extent of the spraying activity is described as 'minimal' and 'small scale' aesthetic repairs on used vehicles that are to be re-sold. The spraying is therefore said to amount to minor repairs to used cars which was deemed to be lawful in 1994.
11. Documents purporting to be Statutory Declarations from Mr Daniel Zaloga, Mr Jagit Singh, Liaquat Ali Janjua and Mohammed Ali Janjua have been submitted. However, the documents do not follow the prescribed form of words set out in the Schedule to the 1835 Statutory Declarations Act. Thus, they cannot be afforded the full weight of a correctly made Statutory Declaration. Nevertheless, the documents are sworn in the presence of a solicitor and thus I afford them considerable weight.
12. The statements of Mr Zaloga and Mr Singh indicate that they have witnessed vehicle spraying on the Land but do not say whether it was part of the used car sales use, or whether it was a separate primary use.
13. Nevertheless, Liaquat Ali Janjua states that limited spraying activities for the vehicles that are purchased for resale has been undertaken. They set out that they have been involved with the business on the Land since 2004 and thus have a long and detailed knowledge of the types of activities undertaken.
14. Likewise, Mohammed Ali Janjua indicates they have been involved with the business since around 1990 and that limited spraying of vehicles which are purchased for resale from the Land has been undertaken. Again, they state that the spraying activity is not significant and is associated with making small, aesthetic repairs on used vehicles and no large scale bodyshop work is undertaken.
15. On that basis, I find that the appellant's evidence points towards the spraying activity being functionally linked to the primary use of the land for the sale of used cars rather than a separate, primary use where vehicles are brought in solely for spraying and not for sale or storage on the Land. Indeed, the LPA has provided no evidence that that appears to be the case.
16. The onus is on the appellant to make out their case to the standard of the balance of probabilities. However, it was held in *Gabbitas*³ that an appellant's evidence should not be rejected simply because it is not corroborated. If there is no evidence to contradict their version of events, or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted.
17. The LPA states that the appellant fails to deal with the breach of planning control alleged in the enforcement notice, as it only focuses on the change of use element. However, the notice is clearly targeted at operational development comprising the spray booth and a material change of use. There is no reason why the appellant cannot pursue a ground (c) appeal in respect of one aspect of the breach.

³ *Gabbitas v SSE & Newham LBC* [1985] JPL 630

18. Likewise, the LPA indicates that it is not considered normal for a car sales company that can sell/display a maximum of eight cars to have a spray facility. However, this is somewhat of an assertion and does little to counter the appellant's claim that such spraying activities are ancillary to the car sales. Indeed, it seems to me that the spraying of vehicles to make good minor damage to the bodywork is an activity which would normally be found in uses for the sale of used cars.
19. Whilst I note no environmental permits for spraying have been sought, this supports the appellant's case that the spraying has been low level and ancillary to the used car sales.
20. As a result, I find that the LPA have not provided evidence which contradicts the appellant's version of events. Moreover, I find the appellant's evidence is sufficiently precise and unambiguous.
21. On that basis, I find that, at the time the notice was issued, that the use of the land for commercial spraying was ancillary to the mixed use of the land for a Class C3 single family dwellinghouse and storage and sale of used cars and the alleged change of use was not material. Consequently, the alleged change of use does not amount to development for the purposes of S55(1) of the Act since it is not a material change of use. The alleged breach of planning control is not therefore a breach of planning control.
22. The appeal on ground (c) therefore succeeds in relation to the alleged material change of use.
23. The appeals on grounds (d), (a), (f) and (g) do not fall to be considered in relation to the alleged material change of use.

Appeal A on ground (d)

24. The appeal on ground (d) was made solely in relation to the material change of use part of the alleged breach of planning control stated in the notice. However, in light of the success on ground (c) in relation to the change of use, ground (d) does not fall to be considered since the notice will be corrected to delete that part of the breach. Otherwise, the appellant accepts that the erection of a spray booth is not immune from enforcement action.
25. The appeal on ground (d) fails to that extent.

Appeal A on ground (a) and Appeal B

26. An appeal on ground (a) is brought on the basis that, planning permission ought to be granted in respect of any breach of planning control stated in the notice. Where an appeal on ground (a) is duly made, an application for planning permission is deemed to have been made under S177(5) of the Act.

Procedural Matters

27. Appeal A seeks planning permission for the alleged breach stated in the notice, as corrected, that being the erection of a spray booth. Appeal B is an appeal against the refusal of planning permission for the same building. I have therefore considered both appeals together, albeit separate conclusions and decisions have been reached on each.

28. The retention of a building is not an act of development. I have therefore determined Appeal B on the basis that planning permission is sought for the erection of a replacement spray booth/outbuilding.

Main Issues

29. The main issues are:

- the effect of the development on the character and appearance of the area; and,
- the effect of the development on the living conditions of neighbouring occupiers with particular regard to noise and air quality.

Reasons

Character and Appearance

30. The Land comprises a pair of semi-detached, two storey properties. The properties are in use for residential and car sales and storage. The spray booth is located to the rear.
31. Whilst there is a large industrial estate located a short distance to the west, the surrounding area is predominately residential in character, with a pattern of residential properties extending northwards from Lake Avenue with Carlisle Road and Whitby Road and with Woodland Avenue to the east. Although the appeal site has a lawful use for the storage and sale of used cars, that is largely physically manifested through cars being placed in the rear garden area. That in itself is not out of keeping with the residential character, since cars are a common feature of residential areas.
32. The spray booth comprises a building measuring around 8.7m in length and 4m in width. It is said to have a height of around 3.8m to the ridge and 3.2m to the eaves. It has a dual pitched roof and is finished externally in green, galvanised panels. To the front it has a pair of double doors which open out onto the yard area of the property. As a result, the main structure of the building is of an appearance and scale akin to a domestic garage.
33. Moreover, it is located close to the rear boundary of the site which backs onto the large outbuildings of 49 and 51 Carlisle Road which extend across the full width of the boundary and are greater in height than the appeal building. Furthermore, I was able to see from my site visit that there are outbuildings of various sizes in the area. To that end, the main structure is not out of keeping with the surrounding area.
34. However, the building contains flue chimneys which measure around 4.4m and 4.8m from ground level. They extend a considerable height above the building, as well as the other outbuildings on the site. Moreover, they appear at odds to the prevailing, domestic character of outbuildings in the area as they give the building a distinctly industrial appearance. Although they are screened from some views due to intervening buildings, they can be seen from surrounding properties as well as from Lake Avenue itself. I was able to see that the building is visible from the gap between No 44 and 46/48. Consequently, the chimneys result in the development appearing as an incongruous feature, at odds to the prevailing character of the area.

35. I conclude, therefore, that the development will have a harmful effect on the character and appearance of the area. Consequently, there will be conflict with Core Policy 8 of the Slough Local Development Framework Core Strategy 2006-2026 (2008) (the CS) which states that all development should be of a high quality design. There will also be conflict with Saved Policy EN1 of the Local Plan for Slough (2004) (the LP) which states that development proposals are required to reflect a high standard of design.
36. The LPA cites conflict with LP Policies EN2 and H15. However, they relate to extensions to existing buildings and the provision of amenity space and are not relevant to the matter before me.

Living Conditions

37. The appeal properties include a residential use within the mix of uses taking place on the Land. Adjacent are residential properties either side on Lake Avenue with further residential properties located to the north on Carlisle Road.
38. CS Core Policy 8 sets out that all development will respect its location and surroundings and shall not give rise to unacceptable levels of pollution including air pollution. The LPA considers insufficient information has been provided to demonstrate how the development does not give rise to unacceptable levels of air and noise pollution to nearby residents.
39. In respect of noise, I note the concerns of the LPA and of local residents who indicate the levels of noise are unacceptable. However, the appellants have submitted a Noise Impact Assessment (NIA). The NIA was informed by noise monitoring in two locations assessing receptors at 44 Lake Avenue, the appeal property, and 51 Carlisle Road, the adjoining property to the rear. The background monitoring took place over a 48 hour period and it found the background level between the hours of 0700 and 1900 was 49.7dB. The results from the spray booth survey found that noise from the north-west side of the spray booth was 41.0dB(A) at both receptors, whilst noise from the south side of the spray booth was 40.9dB(A) at 44 Lake Avenue and 30.7dB(A) at 51 Carlisle Road. On that basis, the NIA concludes that noise from the spray booth falls below background noise levels.
40. However, the surveys found that the levels 1m from the monitoring locations were above background noise levels. Moreover, the levels above are calculated at 1m from the nearest façade of the receptor and thus is predominately based on the impact on internal receptors. There is no assessment of the noise levels in surrounding residential gardens.
41. Furthermore, the NIA sets out that the two surveys were undertaken when the system was operating at its maximum levels for 15 minutes, followed by 15 minute residual surveys with the system off. However, it is not clear what the system is the NIA refers to. It could be the extraction system or the spraying system. Moreover, it is not clear whether the system was simply turned on or whether it was operated in the usual fashion to spray cars.
42. Furthermore, the NIA states that the noise meter at the rear of the building was positioned 1.5m from the ground. However, the photograph of the noise monitor shows it is considerably higher, extending as it did above the 3.2m

eaves height of the building. To that end, it is not clear whether the survey results from that noise monitoring equipment are accurate.

43. In addition, BS4142⁴ states that the reference time interval for specific sound level assessment should be a one hour period during the day time. Two separate 30 minute surveys were carried out. Half of the time, the system was switched off. Furthermore, whilst weather conditions are reported in the NIA, BS4142 is clear that wind speed and wind direction at the monitoring location should be measured. Wind speeds are provided but not wind direction.
44. I note that car spraying has been carried out on the Land in association with the sale of cars for several years. However, there is no substantive evidence before me that the building results in an improvement in terms of the noise deriving from the historic spraying activities, particularly as there is no noise survey data of the historic use. As a result, I find that the NIA does not sufficiently evidence that the spray booth will not result in harmful levels of noise for neighbouring residents.
45. In terms of air quality, an Air Quality Assessment dated November 2021 (AQA) has been submitted with the appeals. In addition to the AQA, the appellants have submitted an Odour Assessment (OA) dated January 2022. The AQA concludes that the development is suitable in terms of air quality. The OA concludes that the residual odour impact is considered to have a slight adverse effect and a low risk, which can be appropriately dealt with by mitigation measures.
46. However, the AQA states that the proposed development will not include any new fixed plant or associated flue stack and thus the need for stack dispersion modelling can be scoped out. That is at odds to the NIA, which makes clear there is plant equipment within the building on which the NIA has been assessed. Moreover, there are two flues on the building. Thus, I am not satisfied it has been adequately demonstrated that the need for stack dispersion modelling can be scoped out.
47. Moreover, the AQA states that the spray booth extraction system will require a periodic emission test to ensure any particulates or VOC emissions are within acceptable limits. It is said that appropriateness of the stack height will be determined through emission testing to ensure any emission releases are below relevant acceptable standards and that once an emission test has been undertaken, the compliant stack height can be established. Thus, it has not been demonstrated that the existing stacks are suitable in terms of air quality.
48. Furthermore, it is stated that the current installation conforms to Haltec (the manufacturer) standard installation procedures, and a supporting letter has been obtained to highlight that the concentrations of particulates are acceptable. However, what has actually been provided is the emission monitoring report from 2016 for a Haltec booth installed on a different site in Warwick. Thus, even if it is the same booth that has been erected on the Land, the emission testing is both out of date and, not applicable to the construction of the booth here. Indeed, it does not demonstrate that the booth was constructed in accordance with the manufacturer's standard installation procedures.

⁴ BS4142:2014+A1:2019 – Methods for rating and assessing Industrial and Commercial Sound

49. Furthermore, it is stated that there is no combustion process involved during the extraction that can generate particulate emission and thus, a detailed assessment for odour emissions has been scoped out. However, the OA is clear that the spray booth extraction system will require a periodic emission test and indeed the recommended mitigation measures include particulate emission testing and abatement. As the LPA point out, the sanding of paintwork, abrasive blasting and spraying can release particulate matter. Thus, it has not been sufficiently demonstrated that a detailed assessment need not be carried out.
50. Moreover, the OA does not specify the residential receptor on which it is based. The LPA points to the IAQM⁵ methodology which states that such assessment should include a summary table of the likely odour effects arising at each representative receptor. That has not been done. Nor has the OA taken into account wind direction. Furthermore, the sniff test undertaken does not include any receptors in Carlisle Road, despite the proximity of the building to some of those properties. Indeed, the OA is clear that, when the sniff tests were carried out, the spray booth was not in operation. Thus, it does little to support the OA's conclusions.
51. In addition, the appellants have not provided details about the on-site commissioning of the spray booth, the type of filters installed, any on-site emission testing or the maintenance or servicing. Moreover, the OA sets out that it is not clear what odour mitigation measures are already in place or when testing/servicing was last done, and thus recommends mitigation in the form of inspection to check for existing filtration or abatement. The OA states that if filtration or abatement is absent, it should be added. There is thus the potential that the building does not have sufficient filtration or abatement and it has not been demonstrated that appropriate mitigation could be installed.
52. Consequently, I find that it has not been demonstrated that the spray booth will not result in harmful impacts in terms of air quality, including odour, for neighbouring residents.
53. I conclude, therefore, that the development will have a harmful effect on the living conditions of neighbouring occupiers with particular regard to noise and air quality. The development therefore conflicts with Core Policy 8 of the CS which states that development shall not give rise to unacceptable levels of pollution, including air pollution, odour or noise.

Alternative A

54. In Appeal A on ground (f) the appellant has put forward the alternative that the building is granted planning permission with the chimneys removed.
55. That would largely overcome the harm to character and appearance that derives from the building. However, it has not been demonstrated that the building could function as a spray booth without the chimneys.
56. Moreover, it has not been demonstrated that such an alternative would overcome the harm which arises to the living conditions of neighbouring properties in terms of noise and air quality. As a result, the alternative would not overcome the planning harm.

⁵ Institute of Air Quality Management

Alternative B

57. In Appeal A on ground (f) the appellant has put forward the alternative that the building is retained but used for repairs and storage, with no spraying carried out.
58. However, that would not overcome the harm which arises to the character and appearance of the area from the building. Nor has it been demonstrated that use of the building for repairs and storage would result in sufficient noise and air quality levels to negate harm to the living conditions of neighbouring properties. As a result, the alternative is not one which would overcome the planning harm.

Conclusions – Appeal A

59. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and variations and refuse to grant planning permission on the application deemed to have been made under S177(5) of the Act.

Conclusions – Appeal B

60. For the reasons give above, the appeal should be dismissed.

Appeal A on ground (f)

61. An appeal on ground (f) is brought on the basis that the steps required by the notice to be taken exceed what is necessary to remedy the breach of planning control or, as the case may be, remedy any injury to amenity which has been caused by the breach.
62. S173(4) of the Act sets out that the purpose of an enforcement notice is to (a) remedy the breach; or (b) remedy injury to amenity. The notice does not state which of the two purposes it seeks to achieve. However, the notice, as corrected, requires the demolition of the spray booth, which it sets out to be the breach of planning control. To that end the purpose of the notice is to remedy the breach of planning control. Consequently, no lesser steps than complete demolition of the building would remedy the breach.
63. It is nevertheless incumbent on me to consider whether there is an obvious alternative than complete demolition which would overcome the planning harm with less cost and disruption.
64. The appellant suggests two such alternatives. The first is to remove only the chimneys from the building as that is what results in the harm to the character and appearance of the area. However, as set out above, doing so would not overcome the harm to the living conditions of neighbouring residents.
65. The second is to retain the building for repairs and storage but cease its use for car spraying. However, as set out above, doing so would not overcome the planning harm. Neither option is therefore an obvious alternative that would overcome the planning harm at less cost and disruption to the appellant.
66. The notice does nevertheless require the erection of a 1.8m high close boarded fence or wall on the boundary. The removal of a fence or wall does not form part of the breach and there is nothing before me to suggest that such works were done to facilitate the breach. The requirement therefore goes

beyond what is necessary to remedy the breach of planning control. I will vary the notice to delete the requirement accordingly.

67. Otherwise, the appeal on ground (f) fails.

Appeal A on ground (g)

68. An appeal on ground (g) is brought on the basis that the time period specified in the notice for compliance is too short

69. The notice gives a compliance period of three months. The appellant argues that six months would be appropriate to allow time to arrange the works. However, whilst I acknowledge the difficult family circumstances the appellant has faced in recent years, there is nothing before me to suggest that the demolition of the building could not be undertaken within a three-month period. It seems to me to be an appropriate period to carry out such works.

70. The appeal on ground (g) therefore fails.

FORMAL DECISIONS

Appeal A

71. It is directed that the enforcement notice is corrected by:

- the deletion of the words, "and material change of use of the site from Mixed Use (Class C3 single family dwelling house and storage and sale of used cars) ("Unauthorised Use") to a sui generis uses consisting of Class C3, storage and sale of used cars and commercial spraying ("Unauthorised Development")" from section 3 of the notice.

72. And varied by:

- the deletion of the words, "Cease the commercial use of the property for the spraying of motor vehicles", from section 5.1 of the notice;
- the deletion of the words, "Remove all items in connection with the spraying of motor vehicles", from section 5.2 of the notice;
- the deletion of the words, "as outlined in blue on the attached Plan" from section 5.3 of the notice; and,
- The deletion of the words, "Erect a 1.8m high closed boarded fence or imperforate wall between no. 44 and no's 46 and 48" from section 5.4 of the notice.

73. Subject to the correction and variations, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B

74. The appeal is dismissed.

J Whitfield

INSPECTOR