



Appeal Decision

Inquiry held on 30 September 2024

Site visit made on 30 September 2024

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 02 December 2024

Appeal Ref: APP/R4408/C/24/3338286

73 South Drive, Bolton-Upon-Dearne, Rotherham, South Yorkshire S63 8JZ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mr Matthew Steven Scott against an enforcement notice issued by Barnsley Metropolitan Borough Council.
 - The notice was issued on 8 January 2024.
 - The breach of planning control as alleged in the notice is 'Without planning permission, the material of change of use of the Land to a mixed use of a dwellinghouse and the operation of a motor vehicle repair and maintenance business.'
 - The requirements of the notice are
 - (i) Cease the unauthorised change of use of the land as a motor vehicle repair and maintenance business cited in paragraph 3
 - (ii) Remove from the Land, all vehicles associated with use as a motor vehicle repair and maintenance business that are not registered to the landowner or the occupants of 73 South Drive Bolton-on-Dearne.
 - (iii) Remove from the Land, all equipment and materials associated with the use of the Land as a motor vehicle repair and maintenance business.
 - The period for compliance with the requirements is two months.
 - The appeal is 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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Decision

1. It is directed that the enforcement notice is varied by:
 - (i) Deleting requirement (i) in full and replacing it with 'Cease the unauthorised mixed use of the Land as a dwellinghouse and the operation of a motor vehicle repair and maintenance business'
 - (ii) Deleting requirement (iii) in full
 - (ii) Deleting requirement (ii) in full and replacing it with 'Remove from the Land, all vehicles, equipment and materials associated with the unauthorised mixed use of dwelling house and the operation of a motor vehicle repair and maintenance business.'
2. Subject to the variations, the appeal is dismissed and the enforcement notice is upheld.

The Notice

3. It is the duty of the Inspector to put the notice in order, irrespective of the grounds of appeal. There is no dispute between the parties that the last lawful use of the appeal site was a dwellinghouse within Class C3 (dwellinghouse) of the Town and Country Planning (Use Classes) Order 1987 (as amended). However as the allegation attacks a mixed use, the requirements should flow from that allegation. A requirement to cease the mixed use is required. I will therefore delete requirement (i) and replacing it with wording which replicates the allegation namely 'Cease the unauthorised mixed use of the Land as a dwellinghouse and the operation of a motor vehicle repair and maintenance business.'
4. Upon compliance with the amended requirements, the appeal property may revert to the previous lawful use through the provisions of s57(4) of the Act. The parties agreed that upon reversion to a dwelling house use, the appellant retains the right to carry out ordinary incidental activities to the primary use of the dwelling house in accordance with the Mansi principle¹.
5. The original requirements (ii) and (iii) are not both needed in addition to requirement (i) to remedy the breach in the event of the notice being upheld. It was agreed that those requirements could be deleted and replaced with 'Remove from the Land, all vehicles equipment and materials associated with the unauthorised mixed use of dwelling house and the operation of a motor vehicle repair and maintenance business.' I will vary the notice accordingly.

Background

6. The appeal site consists of a semi-detached property with a modest front garden. There is an extended garage and some hardstanding to the rear of the property. The allegation relates to a mixed use having occurred due to the nature of the vehicle repairs being carried out at the appeal property. The appellant who is professionally represented is not disputing that a material change of use has occurred and the appeal is proceeding under ground (d) only.

Appeal on ground (d)

7. An appeal under ground (d) is that at the date when the notice was issued, no enforcement action could be taken in respect of the breach of planning control. The relevant period where the allegation relates to a material change of use is 10 years.
8. Under a ground (d) appeal it is for the appellant to show, on the balance of probabilities, that the material change of use took place on or before 8 January 2014 and, that it continued without significant interruption for at least 10 years thereafter.
9. The burden of proof in this case lies with the appellant and the test of the evidence is on the balance of probabilities. As established in case law² and the Planning Practice Guidance (PPG) an appellant's evidence should not be rejected simply because it is not corroborated. If there is no evidence to

¹ Mansi v Elstree RDC[1964] 16 P&CR 153

² Gabbitts v SSE & Newham LBC [1985] JPL 630

contradict their version of events, or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted.

10. The Council maintains that the mixed use became established around 2020. It refers to the complaint history of the appeal site which includes burning waste from car part packaging, noise issues after 11.00 p.m. and machinery noise and cars awaiting repairs and being parked on the street.
11. A complaint also referred to noise from grinders and loud machinery until midnight and also vehicles blocking the pavement. The appellant also provided a letter dated the 29 June 2020 from the Council at the Inquiry. The letter referred to vehicle repairs being carried out on a frequent basis on the adopted highway as well as causing obstruction on the pavement.
12. The appellant, Mr Liam Jackson and Mr Eddie Edmonds gave evidence on oath. The appellant provided 6 witness statements consisting of 1 page each including one from Mr Eddie Edmonds.
13. The appellant became the tenant of the appeal property as soon as he was able to do so following the death of his father when he was 14 years old. His father used to carry out vehicle repairs from the garage at the rear of the appeal property. The appellant attended college for 2 days a week but has always been interested in and worked on cars. He worked for a company called Marks Tyres between 2012 and 2013 but has worked from the appeal property since 2013. The nature of his work includes welding, electrics and servicing of vehicles.
14. The area to the rear of the appeal property is modest. The original garage at the appeal property was extended around 2014 and now provides room to carry out work on one car within it. The rest of the garage space is currently used for storage. There is now a gate to the side of No 73. Photographs also show that a hedge was previously removed from the front to create an open area. However, the front garden is now enclosed by a wall. Any changes in space within the appeal site over the relevant period is likely to have impacted how the business has operated.
15. The appellant indicated that whilst he used to store car parts in the appeal dwelling, he no longer does that. The appellant does his paperwork at his kitchen table. The appellant referred to self- assessment for tax but states that he is not good with paperwork and does not have an accountant. He referred to contracts with a local taxi company, buying parts and having customers. He did state at the Inquiry that he claimed benefits for a short period during the Covid pandemic due to the 'stay at home' instruction. However, he stated when he was permitted to do so, he carried out vehicle repairs for essential workers such as nurses. The appellant stated that he aims to have four customers per day. However, there could be periods when he has no customers or has more than 4 customers in a day.
16. Mr Eddie Edmonds lives at No 62 South Drive. In his statement, he described himself as a customer of the appellant's for at least 15 years. When asked about payment, he stated that he bought the appellant a drink or exchanged parts for his services as the appellant was helping him out on a friends basis. He did not recall what happened to the appellant's business during Covid and said he didn't pay particular attention to the appellant's business on a daily basis. Whether or not Mr Edmonds can be described as a customer, he was

unable to provide any detailed information as to the nature and extent of the mixed use over the relevant ten year period.

17. Mr Liam Jackson has lived at the appeal property with the appellant since June of 2014 and has helped the appellant with paperwork and ordering of parts. He also helped with setting up the social media page to advertise the business rather than rely on word of mouth.
18. The Council produced details of social media posts which date from around 2016 to indicate that the nature of the business also changed around that time. Prior the use of social media, the appellant relied upon word of mouth to attract business. The appellant stated that using social media did not alter the nature of his business. However, there is no limited evidence from the appellant or his witnesses to show the extent of the car repair element of the mixed use either before or after using social media.
19. Mr Jackson knew the appellant prior to 2014 as his sister used to be friends with the appellant. He stated that the appellant used to work a lot of hours including into the early hours of the morning but his hours have now reduced.
20. The appellant and Mr Jackson did state that the appellant had worked long hours in the past but now worked from 10.00am to 4pm on weekdays and not on Sundays. Even on the appellant's own evidence, the manner in which the car repairs element of the mixed use has operated has changed during the relevant ten year period.
21. The witness statements of the five witnesses who did not attend the Inquiry, refer to the appellant having lived at the appeal property for a long time and refer to car repairs being carried out, which is not disputed by the Council. In my view, these statements are largely generic and do not provide any details about the number of vehicles being repaired or parked at the property in connection with car repair use. The written statements do not materially add anything potentially determinative to the issue as to the precise extent or continuous periods of car repair activity at the site.
22. The level of activity of the use has clearly fluctuated over time. If there were periods where, the appellant was servicing less vehicles, there would be less coming and goings to and from the appeal site and less activity within the appeal site. If one customer attended per day and was able to park at the rear or in the garage, that is unlikely to result in a level of activity that would amount to more than a use incidental to the residential use of the site.
23. While I am satisfied a material change of use to that alleged in the notice occurred in 2020, the activity level before that date was not of an intensity to amount to a material change of use within the planning unit. Prior to 2020, I find that the level of use was such that it was incidental to the residential use of the planning unit.
24. For a material change of use to have occurred there must be some significant difference in the character of the activities from what has gone on previously as a matter of fact and degree. Not every change of use is material. The use of a garage to the rear of a dwelling and carrying out some car repairs, for friends and family, is not necessarily a material change of use to a mixed use of a dwellinghouse and the operation of a motor vehicle repair and maintenance business. Changes in hours of operation, the number of

customers leaving cars and collecting cars, are factors that are likely to impact the nature of the use. The appellant's evidence is essentially limited to stating that he has had a business and has carried out car repairs at the appeal property.

25. Based upon the evidence before me, I am satisfied that the appellant has carried out car repairs from the appeal property for a number of years. However, it is for the appellant to show on the balance of probabilities that the extent and nature of the car repairs resulted in a mixed use which continued for at least 10 years without significant interruption.
26. The appellant's evidence is not sufficiently precise or unambiguous and has therefore not demonstrated, on the balance of probabilities, that the material change of use of the building began on or before January 2014 and continued without significant interruption for at least 10 years thereafter. The appeal under ground (d) therefore fails.

Conclusion

27. I conclude that the appeal should not succeed. I shall uphold the enforcement notice with variations.

E Griffin

INSPECTOR

APPEARANCES

FOR THE APPELLANT

John Evans	Solicitor, W Brook & Co Limited
Matthew Steven Scott	Appellant
Liam Jackson	Witness
Eddie Edmonds	Witness

FOR THE LOCAL PLANNING AUTHORITY

Barnsley Metropolitan Borough Council	
Constanze Bell	Barrister, Kings Chambers
Chris Byrne	Planning Enforcement Officer

DOCUMENT HANDED IN AT THE INQUIRY

Council Letter dated 29 June 2020