



Appeal Decision

Site visit made on 13 January 2025

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH JP

an Inspector appointed by the Secretary of State

Decision date: 20 January 2025

Appeal Ref: APP/G5180/C/23/3320362

Land at Flintlock, Norsted Lane, Orpington, BR6 7PQ shown edged in red on the plan attached to the notice

- 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 Andrew Harding against an enforcement notice issued by the Council of the London Borough of Bromley.
 - The enforcement notice was issued on 13 March 2023.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the Land from a residential use to a mixed use of residential and commercial use as a car repair business.
 - The requirements of the notice are to:
Cease the unauthorised use of the above Land as a mixed use of residential and commercial use as a car repair business and restore the Land to a solely residential use.
 - The period for compliance with the requirements is 2 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) (f) (g) of the Town and Country Planning Act 1990 as amended. Since the appeal on ground (a) has been made, the application for planning permission deemed to have been made under section 177(5) of the Act as amended (the Act) falls to be considered.
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Decision

1. It is directed that the enforcement notice be corrected by deleting the words 'and restore the Land to a solely residential use' from the end of the sentence in section 5. Subject to this correction, the appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Procedural Matters

2. An enforcement notice may not require that a particular use of land be undertaken. It is sufficient, and permissible, however for it to require the cessation of an unauthorised use. Therefore, I am using my powers to remove inappropriate wording at the end of the sentence in Section 5 of the notice whilst retaining the start of that sentence.
3. The appellant has referred to the notice as being vague and imprecise. However, I do not agree as the allegation and requirements are suitably clear. The appellant can readily see and understand what is being alleged in the notice and what must be done to comply with it. Indeed, his appeal submissions show that he does.
4. Since the notice was issued, and the appeal made, the National Planning Policy Framework (the Framework) has been revised. Both main parties were invited to make comments on the application of the revised Framework to the appeal issues. I have taken into account all responses received.

5. It is part of the appellant's case (reflected in his ground (f) argument that the notice requirements are excessive) that there has not been – as a matter of fact - a material change of use of the land to a mixed use of residential and commercial use as a car repair business. It is said, instead, that a hobby has been pursued (incidental to the residential use of the appeal site) involving the repair of vehicles rather than a business operated from the land. Therefore, this is a 'hidden' ground of appeal under section 174(2)(b) of the Act – a ground (b) appeal – which I will address since the Council has fairly had an opportunity to respond to it in its appeal submissions.

Ground (b)

6. For the appeal to succeed under this ground, the appellant must demonstrate on the balance of probabilities that the matters stated in the notice have not occurred.
7. The appellant says that no car repair business has operated upon the land (as part of the mixed use alleged). That statement is consistent with what he stated in his response to the Planning Contravention Notice (PCN) issued by the Council on 1 June 2020.
8. However, converse to what the appellant has asserted in his appeal submissions, the burden of proof on this legal ground of appeal is upon the appellant and not the Council. He has provided very limited substantive evidence to support his case. The Council and third parties on the other hand have provided considerable evidence to the contrary. Supporting photographs in that regard indicate a significant provision of goods, parts and equipment (including a substantial vehicle lift in the front garden) together with waste and waste receptacles which, collectively, are in my judgement likely to be commensurate in nature and number with a commercial undertaking rather than a hobby incidental to the enjoyment of a residential dwelling. Further, I place significant weight on the fact that the appellant failed to answer questions specifically put to him by way of a hand-served PCN on 26 April 2022 asking whether he was responsible for an advertised service (www.orpingtonaudi.com, 'Volkswagen Audi Service and Repair Centre') which provided the address of the appeal site, or whether he carried out work pursuant to that advertisement.
9. For these reasons, ground (b) does not succeed.

Ground (a) and the deemed planning application (DPA)

Main Issues

10. The main issues in the DPA are:

- whether or not the change of use is inappropriate development in the Green Belt;
- the effect of the change of use on the openness of the Green Belt;
- the effect of the change of use on the living conditions of neighbours, particularly as regards disturbance;
- would the harm by reason of inappropriateness, and any other harm, be clearly outweighed by other considerations. If so, would this amount to the very special circumstances required to justify the development?

Reasons

Green Belt

11. The appeal site is located within the Green Belt.
12. Chapter 13 of the Framework stresses that the Government attaches great importance to Green Belts. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
13. Paragraph 154 of the Framework says that development in the Green Belt should be regarded as inappropriate – with some exceptions. One of those exceptions is the re-use of buildings provided that the buildings are of permanent and substantial construction. Further, for the exception to apply, the re-use must preserve the openness of the Green Belt and not conflict with the purposes of including land within it.
14. It is common ground between the parties that the front detached garage (from which the notice alleges the commercial activity is being conducted) has planning permission, and is of permanent and substantial construction. I have no good reason to find otherwise. However, its re-use causes a significant reduction in the visual and spatial openness of the Green Belt through the creation of a marked degree of waste storage to the front of the site (including tyres) as seen in photographs provided by the Council and third parties. Vehicle operations in the front garden of the property associated with the re-use of the garage building for commercial activity - including upon the vehicle lift - also contribute to the harmful reduction in openness, as does the likely increase in vehicle comings and goings to the business address (advertised it would seem at one point as a 'Service and Repair Centre'). These same factors also cause encroachment of the countryside, against one of the purposes of including the land within the Green Belt.
15. For these reasons, I find that the material change of use is inappropriate development in the Green Belt.

Disturbance to neighbours

16. Together with disturbance caused to neighbours through the likely increase of vehicles coming and going, via a relatively quiet and narrow country lane, to the advertised business I am further persuaded of significant harm to the living conditions of the occupiers of the neighbouring dwelling at Winrose Cottage caused by the hydraulic lifting of vehicles above the level of the boundary fence and as seen from their lounge. I am grateful for the photographs provided.

Other considerations

17. No other considerations have been put forward by the appellant which might amount to the very special circumstances required to justify the inappropriate development in the Green Belt.

Planning Conclusions

18. Paragraph 153 of the Framework indicates that in considering any planning application, substantial weight should be given to any harm to the Green Belt.

19. Accordingly, as I have found harm to the Green Belt I apply substantial weight in respect to it. I have also found that the development causes significant harm to the living conditions of neighbours. In totality, the harm is of a magnitude which weighs very heavily against the development.
20. Having considered all matters raised in support of the proposal I conclude that, collectively, they do not clearly outweigh the totality of the harm I have identified. Accordingly, very special circumstances do not exist and the development is contrary to the guidance in the Framework, Policy 49 of the London Borough of Bromley Local Plan (2019) and Policy G2 of the London Plan (2021) which together seek to protect the Green Belt.
21. The development does not accord with the development plan as a whole, and there are no other considerations which outweigh that finding. Further, there are no conditions I could reasonably impose which would make the development acceptable.
22. Consequently, I will not grant planning permission and ground (a) does not succeed.

Ground (f)

23. For an appeal to succeed on this ground, I must be satisfied that the requirements of the notice are excessive.
24. The appellant's appeal under this ground is misconceived as it is made on the basis that 'it is excessive to require a use not needing planning permission to cease'. That argument – made because it was said that there had been no material change of use from residential use – has already been dealt with under ground (b). Further, the notice requirements would not stop the use of the garage for purposes incidental to the enjoyment of the dwellinghouse.
25. Ground (f) does not succeed.

Ground (g)

26. For success under this ground, I must be satisfied that the compliance period of 2 months falls short of reasonable.
27. The appellant has provided very limited substantive evidence to support his assertion that 12 months would be needed to 're-locate'. Indeed, it is stated within his submissions that he is joint proprietor of Hillside Coachworks Ltd, a local site with 'full planning permission'. But I can see no reason put forward as to why re-location would not be possible to that site, or any other, within 2 months. I find the compliance period reasonable in meeting the simple requirement of ending the unauthorised use. Accordingly, ground (g) fails.

Conclusion

28. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and refuse to grant planning permission on the deemed application.

Andrew Walker

INSPECTOR