



Appeal Decision

Site visit made on 18 February 2025

by **S A Hanson BA(Hons) BTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date 13 March 2025

Appeal Ref: APP/C4615/C/24/3342090

57 Kirkstone Way, Brierley Hill, West Midlands DY5 3RZ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Sakib Ali (BMA Motor Hub Ltd) against an enforcement notice issued by Dudley Metropolitan Borough Council.
 - The notice was issued on 7 March 2024.
 - The breach of planning control as alleged in the notice is: Without planning permission, and within the last ten years, the change of use of the land from a residential dwellinghouse to a mixed use being a residential dwellinghouse with commercial car sales and car storage taking place on the Land.
 - The requirements of the notice are to:
 1. Cease the use of the Land for commercial activities relating to any motor vehicles which are not incidental to the enjoyment of the dwellinghouse. The aforesaid commercial activities are the storage and selling of motor vehicles from the land.
 2. Remove all of the vehicles stored on the land which are not incidental to the enjoyment of the dwellinghouse.
 - The period for compliance with the requirements is 1 (one) month.
 - The appeal is proceeding on the grounds set out in section 174(2)(b) and (c) of the Town and Country Planning Act 1990 (as amended). Since the prescribed fees have not been paid within the specified period, the appeals on ground (a), and the application for planning permission deemed to have been made under section 177(5) of the Act has lapsed.
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Decision

1. It is directed that the enforcement notice be varied by the deletion of “Step 1” in part 5 of the notice and its substitution with the following text:

“Cease the use of the Land for commercial car sales including their storage and display pending sale.”
2. It is further directed that “Step 2” in part 5 of the notice is deleted.
3. Subject to the variations, the appeal is dismissed and the enforcement notice is upheld.

Matters concerning the enforcement notice

4. The Council's case relates to the commercial sale of vehicles and their display and storage pending sale. The notice cannot prevent the parking or storage of vehicles which are kept on the premises merely for use by the occupants. Accordingly, I consider that for clarity “Step 1” of the requirements should be varied slightly to require the cessation of the use of the land for trading in vehicles including their storage and display pending sale. If “Step 1”, as varied, was complied with, “Step 2” would be an unnecessary requirement and could cause confusion. I am satisfied that varying “Step 1” and deleting “Step 2” can be done without causing injustice to either party.

The appeal on ground (b)

5. The issue on an appeal under ground (b) is whether or not the breach of planning control alleged had occurred by the date of issue of the notice. To succeed on this ground, the burden of proof rests with the appellant who must show that the matters as alleged in the notice had not in fact occurred.
6. The appellant claims that the appeal site is private land and is not used for the commercial sale or storage of motor vehicles. All vehicles at the property are claimed to be incidental to the enjoyment of the dwellinghouse. According to the appellant, 11 people occupy the property and 9 hold driving licences. Some are said to have personal cars, some have company cars, and some have both. Some of the residents are said to work for BMA Motor Hub Ltd and are provided with company cars. This, along with cars belonging to visitors, is the reason that sometimes there are high numbers of vehicles at the appeal property.
7. Polling cards relating to nine named individuals attached to the appeal property, one of which belongs to the appellant, have been provided. However, there is nothing to indicate that, except for the appellant, any of the other individuals work for BMA Motor Hub Ltd. Furthermore, there is no evidence to demonstrate that company cars are provided for any individual living at the appeal property and there is no evidence pertaining to private ownership of cars. In this respect there is nothing to support the appellant's claim that most of the cars that have been occupying the appeal property belong to the residents and are not part of any commercial activities.
8. To further support the appellant's claim that there is no commercial activity at the appeal property, insurance policies and correspondence from Autotrader show that the registered address for BMA Motor Hub Ltd is in Stourbridge. While this may well be the current address, there is also information provided by the Council that shows the correspondence address for the company being registered at Brythill Drive having been changed from the appeal property address on 17 December 2023. This is also noted as the correspondence address for the appellant who is the sole active person registered with significant control of the company.
9. Impromptu visits made by the Council between December 2023 and July 2024 note that on each visit there were at least 6 vehicles parked on the driveway during the daytime. Evidence of car sales has been provided by the Council in the form of copies of advertisements taken from an Autotrader webpage listed for BMA Motor Hub Ltd in December 2023, January 2024 and July 2024. The vehicles at the appeal property on those occasions were cross referenced with the details displayed on the Autotrader website.
10. This showed that on 8 December 2023, 6 cars were parked on the driveway, 5 of which were being advertised for sale on Autotrader. On 11 January 2024, 9 cars were parked on the driveway, 6 of which were being advertised for sale on Autotrader. On 3 July 2024, 8 cars were parked on the driveway, 4 of which were being advertised for sale on Autotrader.
11. Information provided by interested parties refer to numbers of cars being kept at the appeal property and visits by prospective buyers. They describe the large forecourt to the property frontage being occupied by the cars being advertised for sale, and the residents' own vehicles at times being parked on the main road. This is reported as often being exacerbated by customers parking along the roads in the

close, to the inconvenience of residents. They report that vehicles parked at the property have corresponded with those advertised for sale on Facebook and Autotrader. At times the driveway has been full of cars and some are claimed to have had prices displayed in their windscreens.

12. I accept that some of the cars parked at the appeal property may have belonged to the occupants, friends or family and I have no reason to doubt that cars pending sale have been used by the appellant, and/or others for their own purposes. However, keeping a vehicle for a short period of time before re-sale would not change the fact that the vehicle was purchased with a view to early sale.
13. From the evidence supplied it is likely that, whether or not it amounts to a material change of use, a commercial business relating to vehicle sales has taken place at the property. Therefore, on the balance of probability, the matters alleged in the notice have occurred and consequently the appeal on ground (b) must fail.

The appeal on ground (c)

14. The appeal made on ground (c) is that the matters alleged in the notice do not constitute a breach of planning control. In pursuing an appeal on these legal grounds, the onus firmly rests with the appellant, and the test is on the balance of probabilities. The planning merits of the use or operations are not relevant, and they are not an issue for me to consider under ground (c).
15. Section 55(1) of the Act describes the meaning of 'development' to include the making of any 'material change in the use of any buildings or other land'. At s57(1), the Act provides that planning permission is required for the carrying out of any development of land. The definition of a breach of planning control in s171A(1) of the Act includes carrying out development without the required planning permission.
16. The appeal property is a detached dwelling with an extensive area of driveway covered entirely by hard surfacing. The notice alleges a material change of use from a dwelling to a mixed use including a car sales business. Whether an activity amounts to a material change of use is a matter of fact and degree, amongst the considerations being whether there is a change in the character of the use of the land and whether there are off-site impacts.
17. When I visited, there were 5 cars parked on the driveway. Several cars have been present at the property on the occasions when the Council visited, and as detailed above, many of those vehicles have been recorded as being for sale. Although a snapshot in time over 3 different visits and with the subsequent checks on Autotrader, it is not unreasonable to presume that the number of cars fairly reflects the scale of the use for car sales at that time. Such use of the land will have likely generated comings and goings of customers and cars. It is highly likely too that some customers would make repeat visits to the property, for example to view cars, undertake a test drive, finalise paperwork or to collect their purchase. It is also possible that prior to the business address being changed, prospective customers may have made speculative visits to the property on occasions. These factors are all suggestive of a significant increase in the number of comings and goings to the residential property due to the presence of the business.
18. The property occupies a suburban, predominantly residential setting, although there is a large supermarket some 200m from the house. During my visit, I

observed that although the surrounding streets might be busier at other times, levels of passing vehicular and pedestrian traffic in the vicinity of the property were relatively light. Therefore, a significant increase in the number and frequency of comings and goings arising from the business is likely to have led to a noticeable increase in general noise and disturbance in and around the property. This would seem to be borne out by neighbours concerning extra activity about the property and highway safety matters noted in connection with the business use.

19. Although no advertisements are displayed at the property, the presence of the business has led to the driveway being almost entirely occupied by cars for periods of time. The accumulation of cars on the driveway that, from the presented evidence, are probably associated with the business is noticeably different in appearance to the more open frontages, with more modest parking space, of most residential property in the surrounding area. This has given rise to a more urbanised feel around the property which is uncharacteristic of its suburban and largely residential surroundings. This is compounded by the visibility of the site being on a corner plot and the extent of hard surfacing to the property frontage, which is in stark contrast to the mostly verdant soft landscaping that is characteristic of the frontages in the vicinity.
20. It is not possible to identify a precise number of vehicles that can be sold without planning permission being required; it is a matter of fact and degree. Clearly the occasional advertising and sale of a vehicle owned by an occupier of the property could be incidental to its residential use. But in this instance, it is my view that the sheer number and variety of cars that have been seen at the property and displayed on Autotrader exceed what could reasonably be regarded as incidental. Furthermore, the car sales do not go unnoticed in the neighbourhood due to customers and the parking of vehicles. It is likely that the sales activity will have generated visitors over and above what might be expected for a property in use as a single dwellinghouse. Also, it is clearly trading as a business generating an income that supports the employment of others, which must mean that there has been a significant trade in vehicles.
21. Consequently, as a matter of fact and degree, given the likely associated increase in noise and disturbance as well as its visual impact, the business use has more likely than not resulted in a material change in the character of the use of the property. On the balance of probabilities, the scale of the business use occurring at the appeal property is such that it is not incidental to the primary use as a dwelling but is itself a primary use. It follows that there has been a material change in the use, involving development for which planning permission would be required.
22. As the appellant has not been able to demonstrate that the matters alleged in the notice do not constitute a breach of planning control, the available evidence showing otherwise, the ground (c) appeal fails.

Conclusion

23. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with variations.

S A Hanson

INSPECTOR