



Appeal Decisions

Site visit made on 25 April 2025

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

an Inspector appointed by the Secretary of State

Decision date: 15 May 2025

Appeal A: Ref APP/D1590/C/22/3301423

Appeal B: Ref APP/D1590/C/22/3301424

Appeal C: Ref APP/D1590/C/22/3300968

364-366 Rayleigh Road, Leigh-on-Sea, Essex SS9 5PT edged bold black on the location plan attached to the notice at Annex B

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- Appeal A is made by Mrs Kirti Amlani, Appeal B is made by Mr Dipak Amlani and Appeal C is made by Mr Karzan Hassan against an enforcement notice issued by Southend-on-sea Borough Council.
- The enforcement notice, numbered 21/00206/UCOU_B/01, was issued on 1 June 2022.
- The breach of planning control as alleged in the notice is:
A Without planning permission, the change of use from storage/distribution (Class B8) to tyre sales and fitting (Sui Generis).
B Without planning permission, the erection of a brick wall and installation of corrugated sheeting and industrial door.
- The requirements of the notice are to:
a) Cease operating as a tyre fitting unit,
b) Remove the corrugated sheeting and blue painted finish from the building,
c) Remove from site all materials resulting from compliance with a) and b) above, including tyres stored externally and internally.
- The period for compliance with the requirements is 3 months.
- Appeals A and B are proceeding on the grounds set out in section 174(2) (c) and (g) of the Town and Country Planning Act 1990 as amended (the Act).
- Appeal C is proceeding on the grounds set out in section 174(2) (a) (c) (d) (f) and (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 falls to be considered.

Appeal D: Ref APP/D1590/W/22/3304020

364 Rayleigh Road, Eastwood, Essex SS9 5PT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Karsaz Hassan (Kays Tyres) against the decision of Southend-on-sea Borough Council.
- The application Ref 22/01051/FUL, dated 12 May 2022, was refused by notice dated 7 July 2022.
- The development is change of use to tyre sales and fitting.

Decisions

1. It is directed that the enforcement notice be varied by:

- Removing the words 'including tyres stored externally and internally' from Section 5c).

2. Subject to this variation (which is due to success to this extent on ground (f)) Appeals A, B and C are otherwise dismissed and the enforcement notice is upheld. As regards Appeal C, planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.
3. Appeal D is dismissed.

Procedural Matter

4. Contrary to some submissions made, it is not for me to challenge whether or not it was expedient for the Council to issue the notice when it did. Case law has determined that particular matter is outside of an Inspector's jurisdiction.

Ground (c); Appeals A, B and C

Ground (d); Appeal C

5. For an appeal to succeed on ground (c) I must be satisfied on the balance of probabilities that the matters stated in the notice do not constitute a breach of planning control. For success on ground (d), I must be satisfied to the same standard that it was not possible to take any enforcement action in respect to any breach at the time the notice was issued. The burden of proof rests with the appellants in these 'legal' grounds of appeal.
6. No case has been advanced by any party that the material change of use alleged by the notice is not a breach of planning control, or that it is now too late to take enforcement action in respect of it.
7. Suggestions have been made that the alleged operational development is lawful without the benefit of express planning permission. It is clear to me from all the evidence that gaps in the upper structure of a pre-existing brick bay have been filled with corrugated sheeting (which has been painted) and an industrial door installed. A brick wall has been created in the space where a doorway existed (to one side of where the new industrial door is located). This, as a matter of fact and degree, constitutes operational development under the Act which materially affects the external appearance of the property and which requires planning permission. It has not been satisfactorily demonstrated that Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended provides general planning permission for the development¹ and, in any respect, Article 3(5) disappplies any such permission ordinarily granted by Schedule 2 where the existing use is unlawful – as has not been contested in these appeals. Accordingly, ground (c) does not succeed on any of the appeals.
8. While the appellant in Appeal C argues that the wall is now immune from enforcement, the submitted plan (PP/02) of the 'existing' building indicates that the operational development described above had not occurred the date that plan was made (April 2021). The photography supports that finding. Accordingly, as the operational development was not substantially completed more than 4 years before the issue of the notice (June 2022) it was possible for the Council to take enforcement action against it². Accordingly, ground (d) does not succeed.

¹ Part 7, Class A – contrary to the suggestion made – does not apply to the use of the appeal site (either its lawful use or actual use)

² Section 171B(1) of the Act

Ground (a); Appeal C – the deemed planning application

Appeal D

Main Issues

9. The main planning issues in the appeals are the effect of the developments upon:
- the character and appearance of the streetscene and wider area, as regards the corrugated sheeting and blue painted finish (Appeal C); and
 - the living conditions of the neighbouring occupiers at 22-24 The Rodings and 6-7 Rodings Close, particularly as regards noise (Appeals C and D).

Reasons

Character and appearance

10. Notwithstanding its location amongst commercial properties (which unlike the appeal building do not prominently utilise corrugated sheeting upon higher-rise elevations), the appeal building is visible from several different viewpoints along Rayleigh Road and prominent in the foreground of residential properties in The Rodings.
11. On my site visit, the earlier blue paint of the frontage had been replaced with black. However, that has not sufficiently mitigated against the poor rudimentary appearance resulting from the significant extent of metal sheeting extending to the high ceiling and roof of the property. The result is a stark and obtrusive structure which contrasts sharply and detrimentally with the residential properties behind, as seen prominently from the viewpoints on Rayleigh Road. The pre-existing structure, a semi-enclosed brick bay, did not produce such effects.
12. For these reasons, the appeal development causes significant harm to the character and appearance of the streetscene and wider area. As such, it is in conflict with Policies KP2 and C4 of the Southend-on-sea Core Strategy (2007) (CS) and Policy DM1 of the Southend-on-sea Development Management Document (2015) (DMD) which together seek to ensure high quality design. For the same reasons, it is in conflict with the design principles of the National Planning Policy Framework (the Framework).

Noise

13. The appeal property is situated very close to residential properties, particularly to 22 The Rodings at its rear. The unauthorised change of use has produced complaints about noise from the use of air compressor equipment at the premises, leading to a noise abatement notice³ being issued.
14. Contrary to as stated in the appellant's Noise Impact Assessment (NIA) in its various iterations, the compressor has not been moved to the 'main building'. I saw it in the part of the property to which the corrugated metal sheeting has been added to make up walls. Further, the roof of that room (greater in area than the 'main building') also appeared to consist of corrugated metal sheeting.

³ Section 80 of the Environmental Protection Act 1990

15. The NIA is fundamentally flawed since, as made explicit by its author, the calculations have been based on the compressor being based in the 'main building' with brick walls and a roof being constructed of plasterboard and insulation. Consequently, the 'as-is' situation has not been assessed and it is reasonable to conclude that the 'breakout noise level' has been underestimated. Accordingly, I give the NIA's conclusions very limited weight.
16. It seems to me an unlikely (and as it has turned out, incorrect) assumption to have made that the air compressing equipment would be moved to the 'main building' given the relatively small space that part of the property provides, and which is restricted further by its layout and use as a reception and office. Practically, it does not seem a viable proposition – nor would the fitting of an acoustic curtain over the open roller shutter door to the 'main building' (as recommended in the NIA as necessary) considering it is the only access⁴ to the reception and office (and therefore presumably would need to be lifted on a routine basis, with the contingent risk that it would be compromised as an effective acoustic barrier).
17. These factors may be why instead the appellant and his agent have put forward proposals (through conditions) for the acoustic barrier to be fitted to the new entrance to the 'tyre store/fitting room' where the compressor is in fact situated, and for the corrugated walling to be replaced by brickwork on its front elevation up to eaves level. However, and notwithstanding the risk of compromise of the acoustic barrier by lifting/non-use bearing in mind that the entrance forms the only opening into the room providing access and ventilation, those proposals do not take into account noise breakout through the corrugated sheeting roof to the very proximate residential receptors which the NIA has failed to address.
18. Restricting hours of operation would not sufficiently mitigate the noise disturbance caused by use of the air compressing equipment during any reasonable permitted hours.
19. For all these reasons, I find that the appeal developments cause (and would cause under the proposed conditions) significant harm through noise disturbance to the living condition of the neighbouring occupiers at 22-24 The Rodings and 6-7 Rodings Close. As such they are in conflict with Policies KP2 and CP4 of the CS and Policy DM1 of the DMD. For the same reasons they are in conflict with the design principles of the Framework.
20. Accordingly, the appeal developments do not accord with the development plan as a whole and there are no other considerations which outweigh these findings. I will not grant planning permission in respect to either Appeal C or D. Ground (a) of Appeal C does not succeed and I am dismissing Appeal D.

Ground (f); Appeal C

21. For an appeal to succeed on this ground, I must be satisfied that the notice requirements are excessive in achieving its purpose. It seems to me that the purpose of the notice is to remedy injury to amenity caused by the breach of planning control.

⁴ And, indeed, opening of the structure of the 'main building' of any kind - there being no windows.

22. I have, in dealing with ground (a), already considered and rejected the alternative scheme put forward by the appellant.
23. Given that the lawful use of the land before the breach of planning control, as explicit in the notice allegation, was for storage/distribution I find that it is excessive for the notice to require the removal of stored tyres. Ground (f) therefore exceeds to this extent and I am using my powers to vary the notice accordingly.

Ground (g); Appeals A, B and C

24. For success on this ground, I must be satisfied that the notice compliance period of 3 months falls short of reasonable.
25. The appellants in Appeals A and B say that 3 months are needed to resolve the matter. However, that is exactly what the notice provides.
26. The appellant in Appeal C argues that 6 months would be reasonably necessary to make arrangements for a contractor to comply with the notice requirements and make the premises secure for use. However, there is very limited evidential support for that argument and it has not been demonstrated that 3 months is not a reasonably sufficient time for the corrugated sheeting to be removed and the unauthorised use to cease. Further, due to success on ground (f), it is no longer a requirement for tyres to be removed from the land.
27. Accordingly, ground (g) does not succeed on any appeal.

Conclusions

28. For the reasons given above I conclude that the appeals A, B and C should not succeed, save to the extent I have indicated on ground (f) of Appeal C. I shall uphold the enforcement notice with a variation and refuse to grant planning permission on the deemed application made under appeal C.
29. For the reasons given above I conclude that appeal D should be dismissed.

Andrew Walker

INSPECTOR