
Appeal Decision

Site visit made on 7 October 2025

by **Paul Dignan MSc PhD**

an Inspector appointed by the Secretary of State

Decision date: 23rd October 2025

Appeal Ref: APP/C4615/C/24/3350151

Land known as Tomlins Used Car Centre, Birmingham New Road, Dudley, DY1 4PD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Buttergrove Housing against an enforcement notice issued by Dudley Metropolitan Borough Council.
- The notice was issued on 11 July 2024.
- The breach of planning control as alleged in the notice is Without planning permission and within the last 10 years: (i) the unauthorised change of use from car sales to car sales with car wash & valeting services; (ii) the erection of gates, as illustrated in Plates 1, 2 and 3 enclosed; (iii) the erection of Structure A, as illustrated in Plate 4 enclosed; (iv) the erection of structure/outbuilding B, as illustrated in Plate 5 enclosed; (v) the erection of structure/outbuilding C, as illustrated in Plate 6 enclosed; and (vi) the laying of hardstanding, as illustrated in Plate 7 and coloured pink on the Plan for the storage of cars to facilitate the unauthorised change of use from car sales to car sales with car wash and valeting services.
- The requirements of the notice are: I. Cease the unauthorised use as a car wash and car valet; II. To remove the gates (as illustrated in Plates 1, 2 and 3 enclosed) which facilitate the unauthorised use, to comply with 5(i) above; III. To remove Structure A (as illustrated in Plate 4) which facilitates the unauthorised use, to comply with 5(i) above; IV. To remove Structure/Outbuilding B (as illustrated in Plate 5 and defined by plans on Plate 8 and 9) being an unauthorised extension to an original structure and which facilitates the unauthorised use, to comply with 5(i) above; V. To remove Structure/Outbuilding C, (as illustrated in Plate 6) which facilitates the unauthorised use, to comply with 5(i) above; VI. To remove the area of hard standing (as illustrated in Plate 7 & coloured pink on the plan) which facilitates the unauthorised use, to comply with 5(i) above; VII. To remove the building, machinery, and all other installations including advertising signage, brought onto the Land to facilitate the unauthorised use, to comply with 5(i) above; and VIII. To restore the Land to the condition prior to the commencement of the unauthorised use as a car wash/car valeting facility.
- The period for compliance with the requirements is 1 month.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (d) and (f) of the Town and Country Planning Act 1990 (as amended).

Decision

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

the substitution of the plan annexed to this decision for the plan attached to the enforcement notice; and

the deletion of the requirement at 5 (i) and its substitution with “(i) Cease the mixed use of the Land for car sales with car wash & valeting services.”

Subject to the correction and variation, the appeal is dismissed and the enforcement notice is upheld.

Preliminary matters

2. The appeal site was formerly a used car sales facility, trading as Tomlins Used Car Centre. Planning permission for that use was granted in 2003¹. Planning permission for the use enforced against, including operational development, was refused² in December 2023. Because the enforcement notice was issued less than 2 years after the refusal of planning permission for substantially the same development, an appeal under ground (a) is barred. That means that I am unable to consider the planning merits of the development.
3. Nonetheless, I have a duty to get the notice in order. This requires an amendment to the notice plan and a variation of the requirements. First, the notice plan shows Structure/Outbuilding B as quite a substantial structure, but in reality it is a relative small extension of the original office/sales building on the site. For clarity I attach an amended plan with a better approximation of the footprint and location of the structure. Regarding the requirements, the notice specifies a mixed use, but the requirements only require a component of that use to cease. The requirements should reflect the description of the breach of planning control, unless there is an intention to underenforce, which has not been indicated in this case. As a matter of good practice I shall vary requirement 1 to refer to the cessation of the mixed use. By virtue of section 57(4) of the act, upon compliance with the notice planning permission is not required to revert to its previous lawful use for used car sales. I am satisfied that these amendments will not cause injustice to the parties.

Ground (b)

4. An appeal on ground (b) is that the matters comprising a breach of planning control alleged in the notice have not occurred, as a matter of fact. However, the appeal as made on this ground does not argue that the matters have not occurred, but that it does not generate excessive noise. It is not disputed that the site is being used for car sales, car washing and valeting, all of which were occurring when I visited. So far as the operational development is concerned, all of the structures erected are present on the site, with the caveat that Building B is far smaller than shown on the original notice plan, though I have corrected that, as noted above.
5. Although raised under ground (c), it is also claimed that the storage containers on the site are mobile and temporary structures and hence should not be considered as operational development. First, to the extent that this may refer to the two shipping containers sited alongside the road frontage within the car sales area, these are not in fact included within the enforcement notice, either in the description of the development or in the requirements of the notice. I have also considered whether Structure/Outbuilding C, the car sales office, is a building or a use of the land by the stationing of a mobile structure for the purposes of car sales. Apparently, its origin is as a shipping container, now adapted for office purposes. It is well established that the appropriate criteria for determining whether a structure constitutes a building are size, permanence, and physical attachment. None of these factors are necessarily decisive and greater weight may be given to one factor over another in reaching a decision. It is ultimately a matter of planning judgement.

¹ Council Ref. P02/2324

² Council Ref. P23/0525

6. In terms of size, the structure is comparable to the undisputed buildings on the site, and it is undoubtedly large enough to be a building. Regarding permanence, while shipping containers are designed to be transported from place to place, and technically it may be true that the structure would be moveable, the presence of concrete steps and additional cladding to seal off the void underneath, along with connection to services and signage, suggests it is likely to remain in one position on the site for a considerable period of time, a characteristic of permanence. So far as fixation is concerned, the size and weight of the container is easily sufficient to achieve a significant degree of affixation to the ground. As a matter of fact and degree, I find that the structure meets all of the tests for being a building and I am satisfied that it represents operational development. But in any case, even it had been a use of the land, its facilitation of the mixed use enforced against entitles the Council to require its removal.

Ground (c)

7. Under this ground the appellant claims that what has occurred does not require planning permission and is therefore not a breach of planning control. This concerns the change of use only. It is submitted that the car wash and valeting is ancillary to the car sales, hence there has been no change of use, the primary use of the site remaining as car sales. However, car sales is confined to a small part of the site at its southern end, whereas the car wash and valeting takes up the greater proportion, and it is open to the public, which I would not expect if it were truly ancillary to car sales. Most of the activity on the site appears related to the car wash/valeting. In fact the character of the site is such that the car wash and valeting is the more dominant of the 2 uses, and very little of the car washing and valeting could be attributed to the car sales operation, which is moderate in scale. I am satisfied accordingly that the use of the land comprises 2 primary uses, neither ancillary to the other, and that the character of the use is materially different to the permitted car sales use. There has therefore been a material change of use, which is development that requires planning permission.

Ground (d)

8. Ground (d) concerns immunity from enforcement due to the operations or use having been liable to enforcement action for 4 years or 10 years respectively without such action being taken. However, while reasons are given under this ground for some of the operational development enforced against, there is nothing to suggest that the operations had been substantially completed at least 4 years before the notice was issued.
9. Although not raised in the course of appeal submissions, it was claimed at the site visit that the new concrete hardstanding in the car sales area was laid over pre-existing hardstanding that can be seen on mapping imagery. However, while some element of hardstanding is evident in the mapping imagery, the land shown is generally greened over, so it cannot be determined on that basis that there was more than a small element of hardstanding there when the imagery was captured. What is there now covers all of the area and is more likely than not, based on the very limited evidence, a recently constructed expanse of new hardstanding. The onus is on the appellant to demonstrate, on the balance of probability, that the hardstanding is immune from enforcement due to the passage of time, and the very limited evidence falls far short of discharging that requirement. The appeal on this ground cannot therefore succeed.

Ground (f)

10. It is evident from the notice that its purpose is to remedy the breach of planning control by restoring the land to its condition before the breach took place. The appeal on this ground must therefore show that lesser steps than specified in the requirements would remedy the breach in that way. However, what has been put forward relates to the planning merits of the development, which I am unable to consider in the absence of an appeal on ground (a). The steps specified appear to me to be no more than is required to restore the land to its condition before the breach took place, and the appeal on this ground must also fail.

Paul Dignan

INSPECTOR



The Planning Inspectorate

**This is the plan referred to in my decision dated: 23rd October 2025
by Paul Dignan MSc PhD**

The Plan

