



Appeal Decision

No site visit made

by **A Berry MTCP (Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 27 April 2026

Appeal Ref: APP/P4605/C/25/3370639

2 Cliff Rock Road, Longbridge, Birmingham B45 8QE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) (“the 1990 Act”).
 - The appeal is made by Mr Nehru Hinds of Pit Stop Tyres Birmingham Ltd against an enforcement notice (“EN”) issued by Birmingham City Council.
 - The EN was issued on 30 July 2025.
 - The breach of planning control as alleged in the EN is: Without planning permission, the unauthorised change of use of the Premises to a tyre repair and fitting shop, not being a use, which can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit, in the approximate position marked green on the attached plan.
 - The requirement of the EN is: Cease the use as a tyre repair and fitting shop.
 - The period for compliance with the requirement is: 1 month after this EN takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(c), (f) and (g) of the 1990 Act.
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Decision

1. It is directed that the EN is corrected and varied by:
 - *the deletion of the words from section 3: “Without planning permission, the unauthorised change of use of the Premises to a tyre repair and fitting shop, not being a use, which can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit, in the approximate position marked green on the attached plan”; and their substitution with the words: “Without planning permission, the unauthorised material change of use of the Premises to a tyre repair and fitting shop in the approximate position marked green on the attached plan”; and*
 - *the deletion of one month and its substitution with three months as the period for compliance.*
2. Subject to the correction and variation, the appeal is dismissed and the EN is upheld.

Matter Concerning the Notice

3. The breach of planning control is “*Without planning permission, the unauthorised change of use of the Premises to a...*”. For a change of use to amount to development there must be a material change in the character of the use that the land is being put to. Therefore, the alleged breach of planning control is the “...unauthorised material change of use of...” (my emphasis).

4. The Council's case is based on the allegation amounting to development and the appellant's case is based on the assertion that the development alleged in the EN does not require planning permission. Section 3 of the EN therefore must be corrected so that the allegation comprises development. Consequently, no injustice would arise from this correction.

Preliminary Matters

5. The appellant originally appealed the EN under grounds (a), (f) and (g). However, planning permission¹ was refused to retain the use of the premises as a tyre repair and changing unit on 29 July 2025. The EN was issued on 30 July 2025 and therefore, it follows that ground (a) is barred under s174(2A) of the 1990 Act.
6. The appellant was notified that ground (a) was barred and the appellant requested that ground (c) be added to their appeal. The main appeal parties were provided time to comment on the ground (c) appeal and therefore, have not been prejudiced by its inclusion.
7. As ground (a) is barred, the planning merits of the development are not relevant to this appeal. Therefore, a site visit would not help me reach a decision. Consequently, I advised the main appeal parties of my intention to determine the appeal without a site visit.
8. Interested parties and the appellant raise matters within their submissions regarding the planning merits of the development. However, ground (a) is barred and therefore, I am unable to take these into consideration.

Appeal on Ground (c)

9. An appeal under ground (c) is that the matter alleged in the EN does not constitute a breach of planning control. The onus of proof is on the appellant to show there has been no breach of planning control. The relevant test is the balance of probability.
10. Section 55(1) of the 1990 Act outlines the definition of development as including *"any material change of use of any buildings or other land"*.
11. The EN (as corrected) alleges that a material change of use to a tyre repair and fitting shop has occurred. The appellant states that the premises were previously used as a "tyre shop ("Frankley Tyres)". No further information has been provided regarding the previous use to suggest that the primary use of the premises was as a tyre repair and fitting shop.
12. The description of development within the decision notice of the appellant's planning application to retain the existing use was *"Retrospective planning permission for a change of use from retail unit (Use Class E) to tyre repair and changing unit (Sui-Generis)"*. I am therefore satisfied that, on the balance of probability, the previous use of the premises fell within Class E of the Town and Country Planning (Use Classes) Order 1987.
13. A tyre sales and fitting shop is a sui generis use therefore, any change of use to or from such a use requires full local consideration through the planning application process². Consequently, planning permission was required for the material change

¹ Planning Ref 2024/07978/PA

² Paragraph: 010 Reference ID: 13-010-20140306 of the Planning Practice Guide

of use of the premises to a tyre repair and fitting shop. The evidence before me does not suggest that planning permission has been granted.

14. For these reasons, the appellant has failed to show, on the balance of probability, that the matters alleged in the EN do not constitute a breach of planning control. Therefore, the appeal on ground (c) fails.

Appeal on Ground (f)

15. An appeal under ground (f) is that the steps required by the EN to be taken, or the activities required by the EN to cease, exceed what is necessary to remedy the breach of planning control or any injury to amenity.
16. The breach of planning control as described in the EN contains superfluous words that are not an Act of development. I have therefore corrected the EN to omit them. I am satisfied that the correction would not cause injustice to either main appeal party as it does not alter the breach.
17. The breach of planning control (as corrected) is the material change of use of the premises to a tyre repair and fitting shop. The EN seeks the cessation of the use. Therefore, the purpose of the EN is to remedy the breach of planning control.
18. The appellant asserts that the requirement is excessive and lesser steps such as reducing signage, limiting outdoor activity, or adjusting operating hours could address the Council's concerns.
19. There is no ground (a) appeal before me as it is barred. Therefore, I am unable to determine whether planning permission could be granted subject to conditions to retain the use. Furthermore, the purpose of the EN is to remedy the breach of planning control. Therefore, any step lesser than the cessation of the use would not remedy the breach.
20. Consequently, the step required by the EN is not excessive to remedy the breach of planning control. The appeal on ground (f) therefore fails.

Appeal on Ground (g)

21. An appeal under ground (g) is that the period specified for compliance within the EN falls short of what should reasonably be allowed.
22. The period for compliance is 1 month. The appellant asserts that this is unreasonably short; closing the business would cause them significant emotion and hardship; there is no justification for a rushed closure; and a longer period would be required to secure and relocate to suitable alternative premises, or to submit a new planning application to the Council that includes the additional information that was missing from their previous submission. They therefore request the compliance period is extended to a minimum of 12 months.
23. The Council consider that it is expedient to cease the use promptly to prevent further harm to the living conditions of the occupiers of neighbouring properties from noise and disturbance, and harm to the character of the area.
24. As previously stated, the appellant submitted a planning application to retain the existing use. However, it was subsequently refused due to insufficient information regarding noise, highway safety and parking. The appellant seeks to re-submit a planning application to address the Council's concerns and is willing for conditions

to be imposed to overcome any identified harm. However, the previous planning application was refused on 29 July 2025. The appellant has therefore had almost 9 months to submit a planning application, and I have not been made aware that this has occurred.

25. I accept that the use is causing harm to the living conditions of the occupiers of neighbouring properties and to highway safety and therefore a period of 12 months (as requested by the appellant) would be a significant period for these matters to remain unresolved.
26. However, I consider that extending the time for compliance to three calendar months would strike a more appropriate balance between remedying the planning harm identified in the EN as soon as practicable and allowing the appellant a more appropriate timeframe in which to submit a planning application and/or find alternative premises to relocate the business.
27. The appeal on ground (g) therefore succeeds.

Conclusion

28. For the reasons given above, I conclude that the period for compliance with the EN falls short of what is reasonable. I shall vary the EN prior to upholding it. The appeal on ground (g) succeeds to that extent.

A Berry

INSPECTOR