



Appeal Decision

Site visit made on 23 July 2026

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 September 2026

Appeal Ref: APP/B0230/C/24/3357206

Land at 70 Portland Road, Luton, Bedfordshire LU4 8AY and land adjoining 70 Portland Road, Luton.

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mr Syed Shah against an enforcement notice issued by Luton Borough Council.
 - The notice was issued on 30 October 2024.
 - The breach of planning control as alleged in the notice is: Without planning permission, the change of use of the Land from a warehouse to a vehicle repair shop ("The Unauthorised Use").
 - The requirements of the notice are to:
 - (i) Cease the Unauthorised Use; and
 - (ii) Remove from the Land any plant, machinery, tools and equipment connected with the Unauthorised use.
 - The period for compliance with the requirements is three calendar months after the notice takes effect.
 - The appeal is proceeding on the ground set out in section 174(2)(b) of the Town and Country Planning Act 1990 (as amended).
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Summary Decision: the appeal is dismissed and the enforcement notice is corrected and upheld.

Preliminary Matters

1. Although neither party submitted a statement of case or final comments in this appeal, the appellant submitted a representation on 14 July 2026, attached to which was a series of tenancy agreements. Despite this email having been received after the deadline for the submission of evidence, it was passed on to the Council who was asked for its comments on this late submission. No response to this request was received.
2. The representation made in the email is very brief. In it the appellant says that the attached documents indicate 'that the site is occupied by multiple independent businesses rather than a single occupier'. They request that regard is had to these 'so that the current occupation and use of the site are accurately reflected'. Although this representation mentions matters not previously raised, it appears, on its face, to relate to the ground (b) appeal made. It is not obvious that it relates to any other ground of appeal. Accordingly, I will consider this representation within the existing ground (b) appeal.
3. On a separate matter, I note in the appellant's appeal form the allegation of victimisation and verbal abuse. Whilst I do not dismiss these matters, they are not relevant to the determination of the appeal that is before me.

4. The appellant also says that they deny 'the allegation of noise and disturbance'. Such matters and the planning merits of the development would be relevant to a ground (a) appeal. The appeal has not, however, been made on this ground.

The Notice

5. Before considering the ground of appeal, I have a duty to put the notice in order, if necessary. The powers transferred to Inspectors under section 176(1)(a) of The Town and Country Planning Act 1990 as amended (the 1990 Act) include to correct any defect, error or misdescription in the enforcement notice or, under section 176(1)(b), to vary the terms of the enforcement notice. In each case, the only test is whether the correction or variation would not cause any injustice to the appellant or the local planning authority.
6. Whilst the notice alleges a change of use, it does not state that this is a 'material' change of use. Unless the change is material, it will not constitute development for the purposes of section 55(1) of the 1990 Act.
7. Section 57 of the 1990 Act informs that planning permission is required for the carrying out of any development of land. The notice is defective in that it does not allege a matter that constitutes development for which planning permission is required.
8. Notwithstanding the above, I have no reason to doubt that the appellant has not understood that the allegation was intended to refer to a material change of use. As such, I am satisfied that a correction to the notice to include reference to a material change of use would not cause injustice in this case.

Ground (b)

9. The appeal on ground (b) is that the matters alleged in the enforcement notice, which appears to the Council to constitute the breach of planning control, have not occurred. Section 174(2)(b) is written in the past tense and the question is whether the breach had occurred by the date of issue of the enforcement notice, as a matter of fact. The notice alleges, once corrected as I intend, a material change of use to a vehicle repair workshop. Whether there has been any other material change of use of the site after the issue of the notice, including the introduction of any other uses, is not relevant to the ground (b) appeal.
10. As I note above, there does not appear to be any dispute that a material change of use has occurred. Accordingly, in order to succeed on this ground, the appellant must demonstrate that, on the balance of probability, the material change of use to the use described in the notice (i.e. vehicle repair workshop) had not occurred prior to the issue of the notice.
11. I note the series of tenancy agreements that relate to the appeal site. The appellant says that these are relevant to the accuracy of the 'current occupation and use of the site'. The appellant does not, however, set out how they say that the site is used and does not indicate how this late evidence demonstrates that the matters alleged in the notice are not correct (i.e. that a material change to a vehicle repair workshop has not occurred).
12. At the site visit I noted a large commercial type building to the rear of the appeal site. Within the appeal site, and to the front and side of the building, I saw an open yard area and the access from Portland Road. These external parts of the appeal

site were enclosed along the site boundary with the building, but were fairly open to the building. This area did not appear to have been sub divided in any obvious way. On this land I observed a large number of vehicles about the site in various conditions. Some appeared to be parked whilst others clearly required repair or, perhaps, dismantling for parts.

13. I was able to observe all parts of the ground floor of the building. The main ground floor area appeared to have been divided into two separate parts. In both parts I saw vehicle repair type tools and machinery, as well as a number of vehicle lifts and vehicle parts.
14. Whilst there were other rooms or enclosed areas on the ground floor, these were open to the main workshop areas and appeared to be used in association with them. For example, I saw an enclosed office within the workshop areas and a kitchen towards the front of the building.
15. What I saw on the ground floor of the building and in the external areas appeared consistent with a vehicle repair workshop use. There was nothing obvious to suggest otherwise.
16. The appellant does not dispute that vehicle repairs is an activity going on at the appeal site and evidence before me also corroborates this. I refer here to the numerous representations of interested parties, many of which specifically refer to the repair of vehicles and the effects of this, including noise and disturbance.
17. As the main part of the ground floor of the building have been divided into two parts, this might indicate that there may be more than one occupier. This does not, however, change that what I observed on the ground floor of the building and on the external areas is consistent with a vehicle repair workshop.
18. The appellant refers in the appeal form to the 'previous (V8) car mechanic business', although does not provide the photographs referred to. Nevertheless, the vehicle repair use may well have been commenced by another previous tenant of the site and may have been ongoing at the site for a while. This only supports what the enforcement notice alleges, which is that a change to a vehicle repair workshop has occurred. Furthermore, the appellant does not suggest that the time for taking enforcement action in respect of what is alleged in the notice has expired and no appeal has been made under section 174(2)(d) of the 1990 Act.
19. As for any other activities on the appeal site, I note the tenancy agreements that relate to, for example, the 'Rear area of Side A (Rear-Left side of Warehouse)' or 'Rear area of Side B'. These might well relate to certain areas of the ground floor of the building. However, there is nothing in the evidence to assist me with this and, as I note above, there was nothing obvious on site to indicate that there were more than two occupiers of the ground floor of the building. Notwithstanding this, whilst some of the names of the tenants might provide an indication of the nature of that tenant's business, there is little before me to set out how each of these tenants might actually use the site; i.e. that the activities these tenants carry out on the site are different to vehicle repairs.
20. Within the first floor part of the building I observed a number of rooms, most of which had locked or lockable doors. I was able to see inside most of the rooms. One appeared to have items stored within it, whilst the other three I observed contained office type furniture and computers. Whilst not occupied at the time of

my visit, these three rooms were laid out like a typical office. I note reference in some of the tenancy agreements to, for example, 'Office #1' and 'Office #2'. The office numbers might well relate to the numbers I observed on the doors of the first floor rooms but, again, there is nothing in the evidence to clarify this. Neither is there an explanation of how each of the 'Office' tenants use the site.

21. Importantly, all but two of the tenancy agreements are dated after the date of the issue of the notice. In view of this, even if I were satisfied that the tenancy agreements were evidence of some other use of the site (i.e. other than that specified in the notice), they do not demonstrate that, on the balance of probability, those other uses or activities, whatever they might be, had occurred on site in some form together with the vehicle repair workshop use prior to or at the time the notice was issued.
22. The agreements dated before the notice was issued relate to 'Office #2' and 'Office #3'. Whilst this tells me that at some time prior to the issue of the notice there were two tenants of the site, there is little more to assist me in determining what this means for this ground (b) appeal.
23. The burden of proof on a ground (b) appeal is on the appellant. All of the above considered, I cannot be satisfied that the appellant has discharged this burden of proof. Having regard to the evidence before me, I conclude that, on the balance of probability, a material change of use of the appeal site to a vehicle repair workshop has occurred and that the ground (b) appeal should fail.

Conclusion

24. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction.

Formal Decision

25. It is directed that the enforcement notice is corrected by the insertion of the word "material" in part 3 after the words "Without planning permission the".
26. Subject to the correction, the appeal is dismissed and the enforcement notice is upheld.

J Moss

INSPECTOR