



Appeal Decision

Site visit made on 18 July 2022

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 July 2022

Appeal Ref: APP/X1735/C/22/3290896

12 Portsdown Hill Road, Havant PO9 3JX

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Nishit Sodha against an enforcement notice issued by Havant Borough Council.
 - The enforcement notice was issued on 21 December 2021.
 - The breach of planning control as alleged in the notice is: Within the last 10 years and without planning permission, a material change of use to a mixed use consisting of B2 car repairs and C3 residential and engineering operations to create a hard surface parking area which forms part and parcel of the mixed use.
 - The requirements of the notice are: 1) Cease the use of the land for any B2 use, including the parking or storage of motor vehicles and equipment for the purposes of business use. 2) Remove from the land all motor vehicles and equipment associated with B2 motor vehicle repairs. 3) Remove the hard-surfaced area engineered for the purposes of parking cars. 4) Restore the land to its condition prior to the breach of planning control taking place.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b) and (f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
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Summary of Decision

1. The appeal is dismissed and the enforcement notice is upheld.

The ground (b) appeal

2. For the ground (b) appeal to succeed the onus is on the appellant to demonstrate, on the balance of probabilities, that the alleged breach of planning control, namely the mixed use to include B2 car repairs and associated hard surface parking area, has not occurred as a matter of fact.
3. The appellant asserts that the site comprises a large family home, garage and garden areas. Whilst there are vehicles on the site, these are all owned by the appellant, members of his family or are in company names, and that from time-to-time servicing of these vehicles is carried out on the site. No vehicles owned by third parties are brought to the site for repairs.
4. The Council has provided evidence of cars at the site registered to a company known as Promech Garage Services Ltd and that the appellant is a director of the company. Moreover, in response to a Planning Contravention Notice it is

stated that cars are bought and sold and that the garage at the appeal site is used for repairs as necessary and that vehicles are driven or towed to the site.

5. Whilst I appreciate the garage at the site is a normal residential size, and the evidence from local residents is mixed concerning the extent of activities taking place and matters such as associated noise, the appellant provides very little evidence to dispute the Council's evidence about the company or activities that have taken place, only that he is currently ensuring that all the vehicles are transferred to his private ownership. This therefore casts significant doubt in my mind about the appellants contention when the onus was on him to demonstrate that the mixed use had not occurred as a matter of fact.
6. The appellant also contends that the physical works taken place are quite limited, with some chalk redistributed on the site to allow a garden area to be formed. However, I could see during my site visit that a substantive area of chalk banking had been removed, leaving a chalkface several metres in height. The area then created has not formed a garden, but a level hardstanding which facilitates parking for a considerable number of vehicles. Whilst I appreciate my site visit only represents a snapshot in time, there were approximately 15 vehicles at the site, and this appears reasonably consistent with earlier photographs before me. I also appreciate the site comprises a large family home, but it thus remains a family home and the number of vehicles and repairs at the site have not been demonstrated as incidental to such a use.
7. In considering the evidence in the round, as a matter of fact and degree the appellant has therefore not discharged the necessary burden of proof to demonstrate on the balance of probabilities that the breach of planning control, namely the mixed use to include B2 car repairs and associated hard surface parking area, has not occurred as a matter of fact.
8. The appeal on ground (b) therefore fails.

The ground (f) appeal

9. The purpose of the enforcement notice is clearly to remedy the breach of planning control and it does not seek to under-enforce. Therefore, for an appeal on ground (f) to succeed it would be necessary for the appellant to explain why the steps required by the notice to be taken exceed what is necessary to remedy the breach of planning control and propose lesser alternatives steps.
10. The appellant asserts that the hard surfaced area is entirely appropriate with the use of the site as a family dwelling, would be classed as permitted development and should be allowed to remain.
11. However, I have already found that the hard surface area is considerable in size and that the appellant has not demonstrated on the balance of probabilities that there has not been a breach of planning control in respect of the mixed use it facilitates. Moreover, given the extent of the engineering operations involved in removing the bank, the hard surface parking area could not have been classed as permitted development. Its removal is therefore not excessive in order to remedy the breach.
12. It is then not excessive to require the removal of all vehicles and equipment associated with the B2 use from the land affected in order to remedy the breach.

13. As no other lesser steps are before me, the appeal on ground (f) fails.

Overall Conclusion

14. For the reasons given above I conclude that the appeal should not succeed. I shall therefore uphold the enforcement notice.

Formal Decision

15. The appeal is dismissed and the enforcement notice is upheld.

Paul T Hocking

INSPECTOR