



Appeal Decisions

Site visit made on 14 August 2018

by **D H Brier BA MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 24 August 2018

Appeal Refs: APP/B5480/C/17/3182540 & 3182523

Land to the south-east side of Benskins Lane, Noak Hill, Romford RM4 1LB

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Ms Rizmi Sami against 2 enforcement notices issued by the Council of the London Borough of Havering.
 - The enforcement notices, labelled A and B respectively, were issued on 24 July 2017.
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Appeal A Ref: APP/B5480/C/17/3182540 (Notice A)

- The breach of planning control as alleged in the notice is change of use of land to the storage of motor vehicles and dismantled vehicle parts and to undertaking vehicle repairs and the dismantling of motor vehicles AND the erection of a shed measuring approximately 4.5m high x 10m wide and 12m deep.
- The requirements of the notice are:
 1. Cease the use of the land for the storage of motor vehicles and dismantled vehicle parts and to undertaking vehicle repairs and the dismantling of motor vehicles.
 2. Remove the shed from the land.
 3. Remove from the land all vehicles, vehicle parts, tyres, other vehicles and plant and equipment used in connection with the associated business.
 4. Remove from the land all materials, rubble and debris associated with requirements 1 to 3 and restore the land to its condition before the breaches took 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), (c) and (d) 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.

Summary of Decision: The appeal is dismissed.

Appeal B Ref: APP/B5480/C/17/3182523 (Notice B)

- The breach of planning control as alleged in the notice is change of use of land to the storage of motor vehicles and dismantled vehicle parts and to undertaking vehicle repairs and the dismantling of motor vehicles.
- The requirements of the notice are:
 1. Cease the use of the land for the storage of motor vehicles and dismantled vehicle parts and to undertaking vehicle repairs and the dismantling of motor vehicles.
 2. Remove from the land all vehicles, vehicle parts, tyres, other vehicles and plant and equipment used in connection with the associated business.
 3. Remove from the land all materials, rubble and debris associated with requirements 1 and 2 and restore the land to its condition before the breaches took place.
- The period for compliance with the requirements is 3 months.

- The appeal is proceeding on the grounds set out in section 174(2) (c) and (d) 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.

Summary of Decision: The appeal is dismissed.

The Appeal Sites

1. The 2 appeal sites adjoin each other. Together, they occupy a long strip of land that extends in a south-easterly direction away from the east side of Benskins Lane. Appeal A concerns the western part of this land and Appeal B relates to its eastern part.
2. The site identified in Notice A includes a parking area alongside the site's entrance and what appeared to be an office building on top of which a portacabin-like structure has been placed. Adjoining this to the east is another structure that provides workshop and storage accommodation. Further into the site is a detached structure, the position of which appears to equate with that indicated on the plan attached to Notice A. This structure comprises 2 van bodies, with a covered open central section in between them. The rest of the land is open and largely taken up with scrap vehicles, vehicle components and tyres.
3. The Notice B Site is devoid of buildings. At the time of my site inspection it was used for the open storage of scrap vehicles together with associated parts, seemingly engines and gearboxes. There are traces of what may have been gateposts roughly where the boundary of the 2 sites is indicated on the Notice Plans but other than that, there is no physical boundary between the 2 areas.
4. The site is enclosed by fences to the north and south where similar strips of land extend south-eastwards away from Benskins Lane. These other parcels of land appeared to accommodate a mixture of residential and commercial uses.

Grounds of Appeal

5. Grounds (b), (c) and (d) are legal grounds of appeal, distinct from any planning merits. In particular, the Courts have held that the onus on proving them lies with the appellants.

Appeal on Ground (b) – Appeal A

6. In order for the appeal to succeed on this ground it has to be shown that the matters alleged in the notice have not occurred *as a matter of fact* [my Italics].
7. I am unable to identify anything in the appellants' submissions that expressly supports the appeal on this ground. The comment that, "*the activity has been taking place continuously at the property for more than 10 years*" is more appropriately directed at ground (d), which I deal with below. That said, if anything, it appears to be a tacit acceptance that the use in question has actually occurred. This, together with what I saw, including the presence of the disputed structure on the land, leads me to the almost inescapable conclusion that the matters alleged in the notice have occurred as a matter of fact.
8. The appeal on ground (b) therefore fails.

Appeals on Ground (c)

9. In order for the appeals to succeed on this ground it has to be shown that the matters alleged in the notices do not constitute a breach of planning control.
10. Again, I am unable to identify anything in the appellant's submissions under this heading that expressly supports the appeals. The arguments advanced relate to matters that are more appropriately dealt with under ground (d); they do not address the particular issue that ground (c) gives rise to.
11. In the light of the foregoing, I am not satisfied that the burden of proof that rests with appellant has been discharged. As I see it, the uses alleged in both notices, together with the erection of the shed referred in Notice A, amount to development and do not constitute permitted development. In the apparent absence of any relevant planning permission, I find that the matters alleged in the notices constitute breaches of planning control. Accordingly, therefore, the appeals on ground (c) fail.

Appeals on Ground (d)

12. In order for the appeal to succeed on this ground it has to be shown that at the time the notices were issued it was too late for enforcement action to be taken. In particular, insofar as the use in question is concerned, it has to be demonstrated that it commenced more than 10 years before the notice was issued and that the use continued actively throughout the subsequent 10 year period. In the case of the building referred to in Appeal A, it has to be shown that it was substantially completed more than 4 years before the notice was issued. The relevant dates therefore are 24 July 2007 and 24 July 2013 respectively. The test for the evidence is the balance of probability.
13. In response to both appeals the appellant claims that the uses in question have been taking place for more than 10 years and have taken place continuously ever since. Other than that, no evidence has been put forward that could help to shed further light on the matter. Furthermore, Appeal A is silent insofar as the operational development alleged in Notice A is concerned.
14. The only indication of the sites in the past is in the photographs appended to the Council's appeal statements, in particular a series of aerial ones from 2002, 2007, 2010, 2013 and 2016. None of these show any significant activity on the land to which Notice B is concerned, albeit a pond shown on the 2002 photograph is no longer present in 2007. Activity can be seen on the Notice A site, but the photograph is insufficiently distinct to enable me to discern just what this is. In addition, on the 2007 and 2010 photographs a proportion of this activity appears to have been occurring in conjunction with the neighbouring land to the south. This raises the possibility that a new planning unit may have been created sometime between then and 2013 when the activity on the Notice A site appears to be distinct from that on the neighbouring land.
15. While the Council's photographs show something occurring on parts of the land they offer little insight into just what was happening on or before 24 July 2007, whether this encompassed the particular activities identified in the respective allegations, and whether any main use was taking place on the Notice B site. Moreover, as the photographs only cover a handful of moments in time, they do not offer a great deal of help insofar as the continuous nature of the uses in

question are concerned. Nor do they offer a cogent basis for concluding that the disputed structure had been substantially completed by 24 July 2013.

16. The lack of evidence of any description, documentary or otherwise, on the part of the appellant, coupled with the questions posed by the relatively limited photographic evidence before me, imparts a high degree of inconclusiveness into this case. As was the case with the ground (c) appeals, I am not satisfied that the burden of proof that rests with the appellant has been discharged in respect of ground (d) either. I find the appellant's case insufficiently clear and unambiguous to demonstrate on the balance of probability that at the time the notices were issued it was too late to take enforcement action.

17. The appeals on ground (d) therefore fail.

Formal Decisions

Appeal A Ref: APP/B5480/C/17/3182540 (Notice A)

18. I dismiss the appeal and uphold the enforcement notice.

Appeal B Ref: APP/B5480/C/17/3182523 (Notice B)

19. I dismiss the appeal and uphold the enforcement notice.

D H Brier

Inspector