Appeal Decision

Site visit made on 25 November 2009

by V F Ammoun **BSc DipTP MRTPI FRGS**

an Inspector appointed by the Secretary of State for Communities and Local Government

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Decision date:
2 December 2009

Appeal Ref: APP/Q1445/C/09/2111091
Harbour Motors, Unit C, 62-66 Station Road, Portslade, Brighton BN41 1DF

- 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 R Lynn Murray Mitchell against an enforcement notice issued by Brighton & Hove City Council.
- The Council's reference is 2007/0622 – ENF/ML.
- The notice was issued on 21 July 2009.
- The breach of planning control as alleged in the notice is *without planning permission, change of use of that part of the Land hatched black on the attached plan from car repair and ancillary car wash, a Class B2 use, to use for the purpose of hand car wash and valeting ("the New Use")*.
- The requirements of the notice are *1. Ensure that the New Use is operated only within the area hatched black on the plan; 2. Within the area hatched black on the plan, ensure that no more than one jet washing water lance is in use or operation at a time; 3. Within the area hatched black on the plan, ensure that no more than one vacuum cleaner is in use or operation at a time; 4. Ensure that any electrical generators providing electricity for the New Use within the area hatched black on the plan shall be enclosed so that any noise emitted from within the enclosure does not exceed 5dB(A) below background (expressed as an L90) level, 1 metre from the window of the nearest residential premises; and 5.Ensure that the New Use shall only operate between the hours of 0730 and 1830 Mondays to Fridays and between 0800 and 1300 on Saturdays. The New Use shall not be operated on Sundays and Bank Holidays*.
- The period for compliance with the requirements is one week.
- The appeal is proceeding on the grounds set out in section 174(2)(c) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.

Summary of Decision: The appeal fails as set out in the Formal Decision.

Preliminary matters

1. Since the failure to pay the prescribed fees within the specified period referred to in the headnote above, the Appellant has sought to add an appeal on ground (a) and thereby have a deemed planning application considered and have the opportunity to obtain planning permission for the alleged new use. The Inspectorate has, however, explained that it does not have the statutory power to remedy the failure to pay the prescribed fee within the specified period. Accordingly and for the avoidance of doubt I confirm that while I have noted all the representations made, including but not confined to those representations from local residents objecting to the use, my decision relates only to the legal ground of appeal (c), which is the claim that the matters enforced against do not constitute a breach of planning control.

2. The Council acting under its environmental health powers has issued a Noise Abatement Notice relating to the water jet spraying machines that are used to clean vehicles. A letter dated 8 October 2009 from the Council's Environmental Health Manager suggests that the Appellant is actively seeking to comply with the requirements of the Notice, and I saw that a wooden barrier had been erected with the evident intention of reducing potential noise nuisance. The abatement notice and compliance therewith is, however, a separate matter from the enforcement notice subject of this appeal.

The appeal on ground (c)

3. In February 2009 the Council issued a Certificate of Lawful Use or Development (LDC) for the premises as a *car body shop/repair garage with ancillary car wash and cleaning business,* on the basis that it had continued for a sufficient period to have become lawful. The enforcement notice applies to a "New Use", and is intended to leave the LDC use unaffected by the notice. For the Appellant it is pointed out that this reflects the difficulty of distinguishing between car wash/cleaning covered by the LDC and that subject of the enforcement notice. Whether or not this is so, I consider that a car wash and cleaning business that is ancillary to a car body shop/repair garage is distinguishable as a matter of fact and degree from one which is not.

4. It is suggested that the reference to a *business* in the LDC indicates that the car wash and cleaning activity can be a separate enterprise, but whatever the ownership/management arrangements I consider that it remains necessary for the activity to be *ancillary* for it to come within the ambit of the LDC. There is, however, no evidence from the Appellant to establish that the present use is indeed ancillary. The evidence from the Council is that it is a separate business, run by different persons from the proprietor of the car body shop/repair garage, and that it was previously located at 11-13 Shelldale Road, Portslade. More significantly, there is no evidence of a functional link between the garage and the present cleaning business, such as where persons who have a vehicle repaired get it cleaned and valeted afterwards. This link is a feature of the LDC use, as the Appellant has stated in a 2 January 2008 letter *…re car washing this is always carried out after repairs … I have always offered this service albeit not advertised …* The present cleaning business is separately advertised and run on a drive through basis, with vehicles entering from Station Road and leaving via East Street, and significantly more vehicles are washed than are repaired. I have concluded that the appeal use is not the ancillary activity for which an LDC was granted.

5. Turning to whether the presence of the present use as a non ancillary separate hand car wash and valeting business constitutes a material change of use, it is argued for the Appellant that any intensification of the car washing operation or change of operator needs to be material in a planning context. It is pointed out that this context includes several other businesses conducted from premises adjoining or near to the appeal use, including the lawful car body shop/repair garage itself. At my site inspection I heard metal grinding or shaping work taking place at the garage so loudly that it clearly outweighed any noise from the car washing activity that was taking place at the same time. There is, however, no evidence to establish that the volumes of noise which I experienced were the normal working noise levels of the garage, or that the hours/days of noise generating work of the garage and the appeal use fully

coincided. On the other hand the fact that complaints have been made by local residents about the car washing business for two years strongly suggests that its effects were noticed and distinguishable from those of the repair garage. Also taking into account the other features of the new use, including that it attracts vehicles to the site that are not being repaired, the presence of a dedicated portacabin, and the apparently separate employment of those working at the garage and those cleaning the cars, I have concluded as a matter of fact and degree that the new use is indeed material in a planning context, and that there has been a material change of use. Planning permission has not been given for this use, and as stated above it does not benefit from the LDC. The appeal on ground (c) fails.

6. For completeness I record a matter raised in the initial grounds of appeal, but not put forward as part of the subsequent professional representations for the Appellant. The Appellant had initially interpreted one of the Council's reasons for enforcement action as indicating that the appeal use was a lawful change of use from Class B2 car repair to Class B1 hand car wash and valeting. The Council's statement was, however, qualified by reference to the requirement for inclusion within Class B1 that such a use be one that can be carried out in any residential area without detriment to the amenity of that area. There is, however, direct and in my assessment convincing evidence from several local residents of harm to their residential amenity. I have concluded that the appeal use was not, at the time enforcement action was taken, within Class B1.

FORMAL DECISION

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

V F Ammoun