The Planning Inspectorate
Yr Arolygiaeth Gynllunio

Penderfyniad ar yr Apêl

Ymchwiliad a gynhaliwyd ar 21/01/20
Ymweliad safle a wnaed ar 21/01/20

gan Hywel Wyn Jones BA(Hons) BTP MRTPI

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 30.07.2020

Appeal Decision

Inquiry Held on 21/01/20
Site visit made on 21/01/20

by Hywel Wyn Jones BA(Hons) BTP MRTPI

an Inspector appointed by the Welsh Ministers

Date: 30.07.2020

Appeal Ref: APP/B6855/C/19/3238330

Site address: Land at former Asda Filling Station, Trallwn Road, Llansamlet, Swansea, SA7 9UU

The Welsh Ministers have transferred the authority to decide this appeal to me as the appointed Inspector.

- 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 Mrs Joanne Wilkins-Clegg against an enforcement notice issued by the City and County of Swansea Council.
- The enforcement notice, numbered ENF2019/0279, was issued on 5 September 2019.
- The breach of planning control as alleged in the notice is: *Without planning permission the material change of use from car sales and a car wash to a mixed use of car sales, car wash and car repairs*.
- The requirements of the notice are: *Cease the use of the land for vehicle repairs and remove all machinery associated with this unauthorised use from the site*.
- The period for compliance with the requirements is 1 month.
- The appeal is proceeding on the grounds set out in section 174(2) (c), (d) and (f) of the Town and Country Planning Act 1990 as amended.

Decision

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

Procedural Matters

2. The appellant did not explicitly plead ground (f) in her appeal, that is that the steps required are excessive. However, mindful of the thrust of her written submissions, at the outset of the inquiry I raised with the parties the potential that the appellant was effectively pleading that ground on the basis that the steps required would prevent car repairs ancillary to the lawful car sales being carried out on the site. I shall therefore deal with this ground of appeal as though it had been pleaded, satisfied that doing so would cause no injustice to any party.

3. As some of the matters in dispute relate to matters of fact the evidence of all witnesses to the inquiry was given under affirmation.

Background

4. In October 2009 a hand car wash business commenced on the site which was previously an Asda petrol filling station and where the large flat roof canopy had been left. The appellant explained that the car sales business relocated to the appeal site towards the end of 2009 or early in the following year. She explained that the previous site had a workshop which was used to repair cars for sale.

5. In 2010 or 2011 discussions commenced between the Council and the appellant to regularise the car sales element of the operation on site. In 2015 permission for the change of use from hand car wash to a mixed use comprising car sales and hand car wash was granted on appeal (ref: APP/B6855/A/14/2225218).

6. The appellant confirmed that the whole of the site is in her ownership and that, alongside her husband, she runs the car sales and repairs business. They have no involvement with the hand car wash business which operates from part of the former petrol filling station forecourt closest to Trallwn Road. The car repairs and the storage of vehicles that are not for sale mostly takes place on the remainder of the forecourt. There are a few bollards and temporary mesh fencing panels that informally separate the car wash and car repairs activities which share vehicular access and manoeuvring areas.

Ground (c) Appeal

7. There are two strands to the appellant's case that no breach of planning control has occurred. One is that planning permission has authorised the car repair activity, the other is that such activity is at an ancillary level to the lawful use of the site and as such is not a material change of use.

8. In support of the first limb the appellant points to the fact that the Design and Access Statement that accompanied the application stated: 'The proposal will create a more usable operation of vehicle sales, which will be affiliated in the patrons mind with other uses that are associated with vehicles'. It is contended that this allows all forms of uses associated with vehicles, including any repairs, to be carried out. However, as the Council points out, there is no explicit reference to repairs in any of the application documentation, including the layout plan which identified the various elements of the mixed use, or in the Council's committee report or the appeal decision. The application sought retrospective permission as the use was already operational, and the Council officers state that there was no signs of any car repairs being undertaken on the site at that time. I am satisfied that the mixed use permission does not authorise car repairs.

9. Turning now to the second limb of the appellant's argument, which is that the extent of repair is ancillary to the sale of cars which is one of the authorised primary uses of the site. There is no dispute that there is a clear association between the repair of cars and their sale, both in terms of their pre-sale preparation and in after-sales work that may be necessary. The point in dispute is whether the extent of the repairs undertaken to vehicles that are sold from the site is ancillary.

10. I accept that car repairs are often carried out on the same site as sales, and I note that the appellant's previous site had its own workshop. However, that does not indicate that the repair activity is ancillary to sales. The uses are normally discrete activities carried out by different personnel and on different parts of a site. In relation to the appeal site the appellant explained the importance to the perception of the car

sales operation of ensuring that repairs are not carried out within the car sales compound.

11. The appellant emphasised the legal duties on her to ensure the safety of the cars sold and the efforts required of the business in preparing the car, and in after sales to offer to fix any problems that might arise within 30 days of sale. However, such obligations do not mean that such works must be undertaken at the appeal site. Indeed the appellant accepted that it used several local businesses to carry out the more extensive repairs that were required on occasions.

12. She also explained that her husband, who is a qualified motor mechanic, did some of the repair work that is carried out on site, under part of the former filling station canopy. Owing to personal circumstances a hydraulic lift had been brought onto site to carry out underside inspections. On site repairs were also undertaken by visiting mobile mechanics. In addition to the hydraulic lift the equipment on site included a compressor, a trolley jack and other jacks, power tools including a grinder, a welding shield, hand tools such as spanners and wrenches. There was also a power washer and vacuum cleaner. Other than the hydraulic lift the other items were all stored within the office at the time of my visit.

13. My visit revealed some 20 cars within the car sales compound, of which some 8 displayed sales particulars and 1 car which was damaged. Adjacent to the compound, which is enclosed by security fencing with gates onto the remainder of the site, there were some 12 cars all of which appeared not to be ready to drive away. One of the cars was being used for the storage of waste comprising mostly car parts, including an engine block. At the inquiry Mrs Wilkins-Clegg explained that there were 6 cars on site that were described as being kept awaiting the resolution of an insurance dispute following vandalism in October 2018 and subsequent water damage.

14. In August 2019 Mrs Wilkins-Clegg explained how she had been involved in a road traffic accident which had required the recovery of her vehicle, a BMW X3 by a truck. This was undertaken by an acquaintance who had firstly deposited a damaged Smart car and body parts at the site to make room for the BMW. This explained the 2 body-damaged cars photographed by the Council. She confirmed that body repairs were not undertaken on site.

15. The appellant explained that she was hoping to sell the site and close the business. A potential sale had been agreed but the seller withdrew a few weeks before the inquiry. Later during the event, the appellant explained that a truck, displaying recovery service signage, had been purchased in the last few weeks to assist the efficiency of the business. Mrs Wilkins-Clegg was unable to explain why, as the business had managed for several years without a recovery truck, it had decided to buy such a vehicle at the time when they were planning to close the business and retire. She did explain that it was intended to remove the recovery signs as it was only intended to pick up cars brought from locations that car transporters would not access.

16. A large totem sign erected in 2015 refers to vehicle diagnostics and electrical repairs being available at the site. The appellant explained that the sign had been erected in anticipation of Mr Clegg's son beginning such a service from the site, but that this had not commenced and that Mr Clegg junior had set up that business from a site in Tumble, Llanelli.

17. The type of work undertaken is more than merely the routine maintenance that many car owners would undertake, such as checking tyre pressure and fluid levels, and the

cosmetic presentation of cars for sale. The works go much further and encompass works carried out by a professional car repair garage. The business seeks to undertake as many of the repair works on site as it can cope with, reverting to nearby workshops only when necessary. The works described included changing of brake pads and discs, and battery replacement. Invoices provided by the appellant record the supply to the premises of various mechanical parts, including brake parts, steering pumps, ball joints, coil springs as well as smaller items such as bulbs and wiper blades.

18. The appellant was unable to provide any detailed information on the frequency that car repairs were undertaken on site explaining that there was no regular pattern. When asked to estimate the frequency that mobile mechanics would attend the site she explained that it would vary from no visits for several months to a presence on 3 consecutive days at busy times. The available evidence leads me to find that the level of the repair activity is significant and is of a nature that is beyond the scope of an ancillary activity and alters the character of the approved use, including giving rise to the potential for noise and disturbance levels that would not be associated with the approved uses. The repairs activity constitutes one of 3 primary uses on the site and constitutes a material change of use from that permitted. Therefore ground (c) fails.

Ground (d) Appeal

19. This ground is that the breach is immune from enforcement because of the passage of time. The appellant suggests that the Council's main concern over the activity is the introduction of a hydraulic lift which she considers is operational development. However, such work merely facilitates car repairs on the site, which is the material change of use attacked by the Notice. Accordingly it is unarguable that the relevant period of immunity in this case is that set out in S171B(3) of the 1990 Act, that is 10 years. During her evidence the appellant confirmed that the first use of the site for car repairs had not commenced in October 2009, maintaining that it commenced towards the end of 2009 or early 2010. Thus, there is no dispute that the 10-year period had not passed by the time that the notice was served in September 2019. It follows that the ground (d) appeal must fail.

Ground (f) Appeal

20. The appellant is concerned that the steps required by the notice would prevent the business from undertaking works to prepare the cars for sale even at a level that the Council would accept as being ancillary. I acknowledge the benefit of certainty that would arise from specifying a particular level or nature of ancillary use. At the inquiry I granted an adjournment so that the Council could consider whether it could suggest revised wording that would accommodate the type of repairs that it considered would be ancillary. After deliberating the main parties confirmed that they were unable to suggest any alternative steps and were content to leave the matter for me.

21. The Mansi principle has long established that an enforcement notice that purports to remove existing use rights should be varied so as to preserve them. However, the Courts have subsequently clarified that it is not necessary to expressly include such a provision in respect of rights that exist as a matter of general law, including ancillary uses. In the absence of an alternative form of words that would expressly and effectively exclude ancillary repairs from the scope of the notice I am satisfied that, as the requirement cannot prevent the exercise of any ancillary activities, it is not necessary to vary it.

22. The appellant considers that the notice violates her husband's rights under the Human Rights Act 1998 in that it would require the removal of the hydraulic lift that has been provided to overcome difficulties encountered in using a trolley jack to inspect the underside of vehicles. Denying such an opportunity is considered to infringe the private and family life of that individual. It seems to me that the requirements do no more than is necessary to remedy the breach of planning control. If there are any interference with the human rights of the appellant's husband, it is proportionate in pursuit of the public interest and would not lead to a violation of his rights.

23. On the basis of legal authority, I am satisfied that the steps required by the notice are reasonable. In deciding whether to prosecute any non-compliance with the notice the Council will firstly have to determine whether any future repair activity is an ancillary one. The Council confirmed that the purpose of the notice was to remedy the breach of control, although it also stated that it was seeking to remedy harm to amenity. On the basis that no lesser steps would serve that purpose, and none have been suggested, I find that the ground (f) appeal cannot succeed.

Other Matters

24. The appellant has expressed concern that the Council did not seek to discuss matters with her prior to serving the notice so that it could be better informed of the activities taking place. She also questions whether it was expedient for it to serve the notice given that, in her opinion, the activities cause no harm. However, in the absence of a ground (a) appeal that would provide a deemed planning application, the merits of the use is not a matter that I can consider. The notice sets out the Council's reasons for issuing the notice and I can find no reason to suggest that it exercised its discretion inappropriately. The Development Management Manual advises local planning authorities to discuss with persons carrying out unauthorised activities prior to instigating formal action. Whilst the appellant maintains that there was no meaningful discussion, any shortcomings in this respect does not undermine the validity of the notice.

Conclusion

25. For the foregoing reasons, and having taken into account all the matters, I shall dismiss the appeal and uphold the enforcement notice.

Hywel Wyn Jones

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mrs J Wilkins-Clegg	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mr Davies	Solicitor to the Council
He called	
Mr S Hughes	Senior Planning Officer
Mr R Latham	Senior Enforcement Officer
Cllr P Matthews	Local Ward Member for the Council
Mr R Allendar	Local resident

DOCUMENTS

1 Appellant's Further Representations bundle

2 Council's site photographs