

Without Prejudice
Date. 11-03-25
Anthony Scholes
Reading Borough Council

Dear Anthony,

Re Land to the rear of 20 Norcot Road Reading

Referring to your E mail of 07-03-25, I would reply as follows;

We must first consider the Planning unit;

The Inspector states in Para 22 of page 4;

*22. In light of the above I would consider that the primary use of the site is one involving general vehicle repairs along with associated storage and, with reference to the judgement in *Burdle & Williams v SSE & New Forest DC* [1972] 1 WLR 1207, I find that the wider site, which is split between the respective plans attached to the two enforcement notices, **represents the planning unit in its entirety.***

Therefore the Inspector considered that the site is one planning unit ie B2, not car sales.

An Enforcement Notice should not affect any existing use rights.
The Inspector refers to The MANSI principle as follows;

The Mansi principle

*23. An enforcement notice should not affect any existing use rights. These include use rights which have accrued by way of immunity from planning control due to the passage of time, as I consider is the case here, given that the 1960s' planning permissions were seemingly not implemented in full accordance with their terms and conditions. This is known as the Mansi principle, founded on the judgement of *Mansi v Elstree Rural DC* [1964] 16 P&CR 153.*

*24. In effect, therefore, an enforcement notice should not be worded to prohibit lawful development after compliance and should be interpreted so far as is possible to avoid a conflict. Neither should a Council, when constructing an enforcement notice, divide up a planning unit artificially so as to achieve a more restrictive effect than would result from an enforcement notice directed at the planning unit as a whole. This was held in the judgement of *De Mulder v SSE* [1973] 25 P&CR 303 JPL 429, and the approach is exactly what has happened in the current case.*

25. During Mr Lloyd's oral evidence, given on behalf of the Council, I asked him what he regarded as being the actual planning unit in this instance and whether he had factored in the Mansi principle and assessed any existing use rights. He responded that, in his view, the site contained several planning units, which included the restaurant. I remarked that this would explain why two separate enforcement notices were issued, and Mr Lloyd agreed, saying that the parts of the site ringed in the enforcement notices had undergone a material change of

use, as specified in the notices, and appropriate action had been taken.

26. Given the legal implications I have outlined I must weigh up the validity of the enforcement notices and whether they can be corrected in accordance with my findings.

28. The Council has misinterpreted the land's existing use rights, to the point where it could be considered that the intention of the notice, the subject of Appeal B, is to extinguish the B2 use and, as explained, by virtue of the Mansi principle, such an approach is unlawful. In illustration it would not be possible to comply with requirement 2 of the notice

30. Whilst I have concluded that the commencement of the vehicle wash and valeting business has not affected the primary use of the site for vehicle repairs and associated activities a new secondary use has sprung up, but not to the point where it could be seen to challenge the predominance of the primary use. Nonetheless, a vehicle washing and valeting operation is essentially noisy in character due to the intensity of activity involved, quite different from that of a car sales use.

34. If I was to take the position that the enforcement notices were invalid and there should be one single (and simplified enforcement notice) ringing the whole planning unit and covering the breaches within, this approach would most likely only involve the Council subsequently issuing a new notice taking account of the actual breaches remaining. The substantive nature of the Council's remedial action would be the same with identical requirements **save for the cessation of the vehicle bodywork repair and maintenance use which, as explained, would be an unlawful requirement.**

The Inspector altered the wording of the enforcement notices as follows;

Enforcement Notice, the subject of Appeal A

37. Point 3 of the Notice ('The matters which appear to constitute the breach of planning control') is deleted and substituted with the following wording:
'Without planning permission, the use of the land, within the area shown edged black and annotated on the attached plan, as a vehicle wash and valeting business (sui generis) with the erection of an associated waiting room.
Also, requirement (i) of the enforcement notice has a minor typographical error, in that the word 'to' should, instead, read 'the'.

Enforcement Notice, the subject of Appeal B

38. Point 3 of the Notice ('The matters which appear to constitute the breach of planning control') is deleted and substituted with the following wording:
'Without planning permission, operational development involving the erection of (a) a building for vehicle body spraying, and (b) a lean-to extension to the garage workshop, within the area edged black and annotated on the attached plan'.

Also, requirement (i) is deleted.

39. No injustice would be caused to either party by making these corrections. Accordingly, I am remedying the said errors on both enforcement notices.

It is therefore obvious that the use of the site for B2 is lawful & can continue without fear of further enforcement action within the subject of Enforcement B.

Enforcement A dealing with the Car wash is straight forward & the use has ceased.

In the Inspector`s conclusions;

47. *The appellants maintain that the land's use for B2 purposes, as claimed, enjoys immunity from planning enforcement action. However, from all the evidence adduced I have found that, from the early 1960's, the land, as a whole, was primarily used for general vehicle repairs and associated activities, along with an unrelated secondary use involving a car sales operation. It would seem that the uses' various components operated with a degree of stability throughout the passage of time, until when, in 2017, the land was sold and the new arrangement involving the commencement of a vehicle wash and valet service, along with the erection of a paint spray booth. These together brought about a change in the definable character of the use due to increased activity and perceptible noise disturbance along with odour emissions, as highlighted by the local objector, Mr Fairburn.*

48. *Accordingly, I have concluded that when the relatively passive car sales business ceased and the wash and valet operation, which effectively replaced it, began the change intensified the use of the land. The consequential noise and disturbance, along with the apparent odour emissions from the establishment of the new paint spray booth, were of such significant materiality as to amount to a material change in the use of the land.*

49. ***Nonetheless, as explained, the land's Class B2 use rights lawfully remain and are safeguarded by way of the Mansi principle. The paint spraying of vehicles falls within Use Class B2. Had the appellants made an appeal under ground (a) a deemed application seeking planning permission for the spray booth's retention would have fallen to be determined. It would then have been open to me to assess whether planning permission should be granted, but subject to restrictive planning conditions so as to regulate the operation within and protect the living conditions of neighbouring occupiers.*** However, no such appeal was lodged.

50. *As it is accepted by both parties that the vehicle washing and valeting operation only commenced in 2017, and the waiting room was only built in 2022, neither development satisfies the requisite immunity criteria and Appeal A cannot succeed.*

51. *Similarly, as the spray booth building was only erected in 2023, it does not have immunity from enforcement action. Further, as the appellants were unable to provide evidence to show that the lean-to extension attached to the workshop enjoyed immunity, Appeal B must also fail.*

52. *It is stipulated that the requirements of both enforcement notices are to be complied with in full within six months of this decision. The paint spray booth, as*

it stands, is therefore set for removal. In light of my findings as to the site's Class B2 use rights, whether it might in future accommodate any paint spraying facility in accordance with the continued lawful use of Building 1 would have to be the subject of negotiation between the two main parties.

53. *As neither appeal succeeds I shall therefore uphold both enforcement notices, but with corrections.*

Referring to the contents of your E mail;

Use

I believe we disagree with regard to intensification of the use. My understanding based on the enforcement notice(s) is that operations of the use are required to be paired right back through:

- “... (ii) Cease to use the land for vehicle body paint spraying;*
- (iii) Cease to use the land for vehicle storage;*
- (iv) Dismantle and remove the vehicle paint spraying building from the land;*
- (v) Dismantle and remove the lean-to extension to the garage workshop from the land*
- (vi) Remove all plant, machinery & equipment for vehicle bodywork & repair and vehicle body spraying from the land;*
- (vii) Remove all vehicles and vehicle parts from the land;*
- (viii) Remove all business advertisements from the land.”*

The above is incorrect as the Inspector corrected both Enforcement notices as stated above, I have copied this again relating to Appeal B as follows;

‘Without planning permission, operational development involving the erection of (a) a building for vehicle body spraying, and (b) a lean-to extension to the garage workshop, within the area edged black and annotated on the attached plan’

And that’s it, on this one, not what you have suggested above. The B2 use is lawful on the whole site. The car wash has ceased therefore the intensification has gone.

Apart from the oven & lean to the site enjoys the continuing B2 use as a car repairers & body shop including the building that was recently used for the car wash.

In relation to the oven & particularly the flue, The Environmental Department, namely Rebecca Moon confirmed in the letter of 14 August 2024 the abatement notice was withdrawn as the reduced noise from the spray booth was at a level below at which it can be deemed a statutory nuisance. (letter attached). I don’t see how this can form a reason for refusal now.

I have read the report from Natalie, this is not an objection, just a request for additional information which can be provided.

As I keep saying, this building is not intensifying the use just making it a better working environment for themselves & the surrounding area.

You suggest the proposed building is too large & too high.

The building is some 36m from the rear elevations of the dwellings in Recreation Road & does not extend beyond the front of the flats at 22 Norcot Road.

The height of the building at 5.7m to ridge & 3.6m to eaves is not out of character with the existing building 2.

The proposed building will substantially improve the site & allow the operations to be carried out within the building rather than outside which is what is happening at present.

I do consider your Council needs to read the Appeal decision properly & understand what the Inspector said, I believe, given the opportunity he would have approved the spray booth (oven) with a temporary use on the lean to.

There is an opportunity here to approve a workshop which is located on a site with a lawful use as B2, we have proved that a spray booth is acceptable in terms of noise & smell now, a new one will be built within the new workshop.

If you decide to refuse this application, we will appeal the decision, please understand you cannot refuse this on is current use, the B2 is Lawful.

As always, I would be happy to discuss this with you & your colleagues rather than carrying on the fight which I am confident we will win in the end.

If you refuse this on the intensification of the B2 use or consider the B2 use is not lawful, you are going directly against the Inspectors' direction & alteration of your enforcement notice & will be a risk at appeal of costs against you.

Please get your Council to read the Inspectors decision properly & than we should talk again, I believe around the table, please remember you did not get any costs awarded to you on the Enforcement Notice appeal as your Council mis interpreted the lawful use of the site within the Enforcement Notices.

I await your reply.

A handwritten signature in blue ink, appearing to be 'Chris Keen', enclosed in a thin blue rectangular border.

Chris Keen MRICS MCABE

