The Planning Inspectorate

Appeal Decisions

Dates of Inquiry 27 and 28 June 2023

Site visit made on 28 June 2023

by Grahame Kean B.A. (Hons) MRTPI, Solicitor HCA

an Inspector appointed by the Secretary of State

Decision date: 30 November 2023

Appeal A: APP/L3245/C/21/3278441

Land at Brickfield Cottage, Edgebold, Shrewsbury, Shropshire SY5 8NT

- 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 Phillip John Roberts against an enforcement notice issued by Shropshire Council.
- The notice was issued on 15 June 2021.
- The breach of planning control as alleged in the notice is without planning permission:
  i. Material change of use of the Land from use for residential to a mixed use for residential and motor vehicle repair and maintenance; and
  ii. Operation [sic] development on the Land consisting of the erection of two buildings to facilitate the motor vehicle repair and maintenance business.
- The requirements of the notice are:
  i. Cease the use of the Land for motor vehicle repair and maintenance
  ii. To demolish/dismantle and remove from the Land the two buildings, garage marked 'X' and timber building marked 'Y' in the approximate positions on the attached plan and make good the Land returning it to its former condition prior to the erection of the buildings.
- The period for compliance with the requirements is:
  (i) 7 days from the date the notice takes effect to comply with 5(i)
  (ii) 3 months from the date the notice takes effect to comply with 5(ii)
- The appeal is proceeding on the grounds set out in section 174(2)(a) (c) (d) (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary Decision: The appeal is dismissed, and the enforcement notice is upheld as corrected and varied in the Formal Decision below.

Appeal B: APP/L3245/X/21/3283806

Brickfield Cottage, Hanwood Road, Shrewsbury SY5 8NT

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr Phil Roberts against the decision of Shropshire Council.
- The application Ref 21/03337/CPE dated 5 July 2021 was refused by notice dated 24 August 2021.
- The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
- The development for which a certificate of lawful use or development is sought is for the mixed use of land at Brickfield Cottage, Edgebold as a residential use and a car repair/maintenance business use including the parking and storage of cars as illustrated edged red on the plan.

Summary Decision: The appeal is dismissed.

Appeal C: APP/L3245/X/21/3288035
Brickfield Cottage, Hanwood Road, Shrewsbury SY5 8NT

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr Phil Roberts against the decision of Shropshire Council.
- The application Ref 21/04686/CPE dated 28 September 2021 was refused by notice dated 16 November 2021.
- The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
- The development for which a certificate of lawful use or development is sought is for the mixed use of land at Brickfield Cottage, Edgebold as a residential use and a car repair/maintenance business use including the parking and storage of cars as illustrated edged red on the plan.

Summary of Decision: The appeal is dismissed.

Appeal D: APP/L3245/W/21/3282667

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Phil Roberts against the decision of Shropshire Council.
- The application Ref 21/02806/FUL, dated 2 June 2021, was refused by notice dated 22 July 2021.
- The development proposed is: garage workshop.

Summary of Decision: The appeal is dismissed.

Applications for costs

1. Applications for costs in respect of all appeals were made by the appellant against the Council. This matter is the subject of a separate Decision.

Procedural matters

Invalid statutory declarations prepared by interested person

2. The statutory declarations (one from the appellant and others made in support) were sworn before a solicitor whose name was unclear and there was no printed name or details of what the practice/firm was. It turned out that he had been acting for the appellant, and indeed was now the advocate at the inquiry.

3. Section 183(3) Legal Services Act 2007 requires that a relevant authorised person may not carry on the administration of oaths in any proceedings in which that person represents any of the parties or is interested (my emphasis). If that requirement is not met, a declaration should not be accepted as properly sworn (although it can be accepted as a statement). To be effective as a statutory declaration it should be sworn (or re-sworn) in front of an independent oath taker. I raised this matter before the inquiry began. Laudably without demur from the advocate H, the declarations were re-sworn in front of an independent oath-taker.

4. The need for declarations to be taken before someone who is disinterested in the proceedings, is in my view an important one because it re-inforces the solemnity and sincerity with which the person being sworn must give their evidence. It avoids suspicion of collusion between oath-taker and oath-giver

that might be perceived to be something other than the deponent's independent and genuine knowledge and opinion of the facts stated.

Claim that the enforcement notice was invalid

5. On behalf of the appellant H questioned the validity of the enforcement notice. In his statement he said that the time for compliance was unreasonably short, it would prejudice the appellant if the notice were varied to extend the period, and therefore as it could not be amended the notice must be invalid and quashed. That is a nonsensical argument. The power to vary the notice in s176 of the 1990 Act includes extending a compliance period precisely to avoid prejudice or injustice to the appellant.

6. However, at the inquiry H did pursue an entirely new and previously unannounced claim of invalidity, based on a claimed lack of proper authority to issue the notice. It is well established that usually an allegation of procedural impropriety over the issue of the notice should be the subject of an application for judicial review. H continued to argue the invalidity point without identifying any matter that might have put me on prior notice that there was a procedural impropriety. The matter took up much time at the inquiry and reference was eventually made to the absence of an officer's report to explain how the matter was considered before enforcement action was authorised. The Council then volunteered detailed documentation which I had to consider at the inquiry. This satisfied me that the required delegations were in place. I am further satisfied that the enforcement notice is not invalid or a nullity.

The position of H as a planning witness

7. In planning inquiries there are no special provisions in the rules for expert evidence, and for procedural purposes expert evidence is treated in the same way as lay witness evidence. That said, concerns were raised as to how H's evidence should be received since he was not a professional planning witness. His "proof of evidence" was almost exclusively summaries of statements of case made in the appeals, planning history and legal and costs submissions.

8. I expressed reservations that if this material were led (and an additional complicating factor was that H was also a witness) and cross-examined on, there would be a significant danger that much time would be spent in exchanges between the Council's advocate and H on legal matters related to the appeals, when time could be saved by making submissions directly to me in opening and closing submissions.

9. I was also concerned at the heavily repetitive nature of H's proof, lack of coherent structure and lack of clarity as to the nature of his client's case. I allowed cross-examination on the parts of the proof that appeared to reflect his own independent professional judgement on the planning issues relevant to the appeals. The Council challenged his expertise as a planning witness but that does not prevent me giving such weight to it as is appropriate.

10. That said, his proof of evidence was to all intents and purposes a regurgitation of factual matters described above save in a few instances discussed below and where I have given appropriate weight to his experience and position as director of the planning agency instructed by the appellant and previous experience in senior local government positions in law and administration. In

closing H did clarify that after my pre-inquiry note he had not envisaged giving evidence, however my note included in terms the following statement:

*I note the Council wish to reserve 3 hours for its advocate to cross-examine Dr Hooper which is excessive, particularly if, as I hope can be agreed, <u>most</u> of his proof can instead be treated as legal submissions rather than evidence in the appeals, and/or as an adjunct to the costs application. (*emphasis supplied*).*

11. Therefore the prospect of his giving evidence in whatever capacity was still live as far as I was concerned.

Main issues in the appeals

12. As agreed with the parties, broadly speaking, the first main issue is whether there is a lawful use of the site as a whole for a mixed residential and car repairs/maintenance, with particular reference to the "2014 Permission" ie permission granted in 2014 for "*use of domestic garage as base for car repair business*", and the alleged continued use of the wider site. The second issue is whether the unauthorised operational development and mixed use should be granted permission. These matters are subsumed within the legal grounds of appeal of the notice, the LDCs and the planning merits of the deemed application and s78 appeal. In addition, in Appeal A ground (f) and ground (g) need to be considered.

Preliminary matter

13. I have noted in passing that the enforcement notice was issued before the LDC1 and LDC2 applications were made. Section 191(2) sets out what is lawful development which includes consideration of whether the development constitutes a contravention of the requirements of any enforcement notice then in force. "In force" has been taken as meaning that where there was no appeal the notice takes effect on the date specified and is therefore "in force", but an appeal against a notice would render it no longer "in force" during the appeal.

14. However, it has also been held (*The Queen on the application of Ocado Retail Limited v London Borough of Islington v Telereal Trillium Limited, Concerned Residents of Tufnell Park [2021] EWHC 1509 (Admin)*) that Parliament did not wish an extant notice "*to be negated by the subsequent application of a time limit in s.171B to something which contravened the requirements of that notice*". In adding that "*the position would be different if at the time the relevant period in s.171B expired the notice had ceased to be in force, e.g. because it had been withdrawn…or quashed*" the court was looking at when a notice would be "in force" for the purposes of s191(2)(b), which appear to be when it is in existence, is not withdrawn or otherwise quashed, declared invalid or a nullity.

15. On that basis, the appellant would not be entitled to succeed in either LDC appeal if there were a contravention of the enforcement notice, since at the time of the LDC applications the notice had already been issued and it would continue in force despite the later LDC appeals.

16. I mention this matter because I think that is the correct position but as it was not discussed at the inquiry, I am entirely content to base my decision on all the appeals on the agreed main issues.

Background and summary of planning history

17. In relation to Appeals A, B and D, the appeal site, Brickfield Cottage, is in the hamlet of Edgebold, 0.5km west of Shrewsbury. Agricultural fields lie to the east, south and west of the site and to the north are three dwellings. Access to the site is via a driveway to the north and along a private track leading to Hanwood Road.

18. Brickfield Cottage is a residential plot whose main dwelling is set back from the highway behind 1 and 2 Brickyard Cottages and Lilac Cottage. A large garage building in the appeal site is to the north-west, west of Brickfield Cottage and immediately to the rear of Lilac Cottage, whose occupant made several complaints about the use of the site. Lilac Cottage has a domestic garage abutting the boundary where the appellant's large garage building is situate.

19. The appeal site for Appeal C differs only in that it excludes the area where a smaller garage used to exist (over which area the larger garage building is now in situ). I shall use the term appeal site to refer to the wider site in Appeals A, B and D unless the context clearly refers to the smaller site in Appeal C.

20. The appellant bought Brickfield Cottage in 2006. The smaller garage, the "original garage", next to Lilac Cottage was apparently converted from an outbuilding in 2010/11 as part of the vehicle repair business. Before then the appellant worked from and outside a "*wooden scruffy shed*" alongside the west elevation of the main house, as declared by his wife who supplied a photograph of the shed (which was subsequently removed).

21. A complaint as to the use of the original garage was made in 2013. The Council officer who visited requested a planning application to retain the garage. Planning permission was then granted in 2014 (the 2014 permission) for "*use of domestic garage as base for car repair business*". The use was strictly limited by condition in accordance with the approved plans that clearly confined the approved use to the area of the building itself which was the red line boundary of the application site as submitted, despite the application form specifying the site area as 1ha. and proposing the retention of several parking spaces but these were not identified anywhere on a plan.

22. In 2017 the then enforcement officer told a complainant that the 2014 permission gave permission for: *"the immediate curtilage i.e. driveway for use of customers cars and it comes with associated use of surrounding ground for general footfall i.e. getting to and from the garage".* The appellant placed some reliance on this but what the Council might confirm as the planning status of land is not equivalent to a planning permission or an LDC.

23. However, also in 2017 the appellant extended the garage space and claimed this was for domestic use. Indeed he told the Council in September 2017: "*the building that is being erected at my home is a domestic garage. I gave much consideration as to whether planning permission was required before starting on the building and concluded from your website that it wasn't necessary*."

24. In light of that statement no enforcement action was taken at the time. However, further complaints were received by the Council about the effect the car repair use was having on nearby occupants, from 2016 onwards.

25. In October 2020 there was a fire, probably due to fault in a customer's car left unattended on site. The garage, described in the fire report as a "triple garage" (ie the original garage as extended) was severely damaged and all three sections had to be demolished apart from, as I understand it, the north wall and a part of the floor surface. Each section contained a burnt-out car. It is probable from the evidence that the fire started in the middle section of the garage that contained the customer's car. Unfortunately the adjoining garage at Lilac Cottage was also significantly damaged by the fire.

26. Following an enforcement investigation in 2020 the Council issued the enforcement notice in June 2021 as described in the banner heading above for Appeal A. It is understood that at that time and without planning permission, the appellant was in the course of constructing a large garage building with three bays as a replacement for what was there before the fire.

27. On 5 July 2021 the appellant applied for an LDC (LDC1) on grounds that the appeal site had been in mixed use as a car repair/maintenance business for more than ten years, including the parking and storage of cars, and residential use. LDC1 was refused by the Council giving rise to Appeal B. In September 2021 LDC2 was applied for, exactly as for LDC1 but excluding the footprint of the original garage building. That was also refused, and Appeal C was made.

28. The record of the Council's building control section shows a notification in December 2020 for "*erection of a replacement workshop for the use of car mechanics and repairs & associated works*" but it failed to mention any domestic use of, or for the new building. Shortly after the enforcement notice was issued, in June 2021 the appellant sought planning permission to "reinstate" the fire-damaged garage which was also refused (Appeal D).

29. It is common ground that one of the buildings cited in the enforcement notice was removed, hence the remaining operational development targeted is the large three-bay garage.

Appeal A

Appeal A on ground (d) and Appeals B and C

30. The appellant's case in the LDC appeals and the appeal on ground (d) in Appeal A is of a piece, therefore the evidence is considered together. The planning merits of the proposed use are irrelevant here as decisions are made on facts, relevant law and judicial authority. If the Council has no evidence itself, or from others, to contradict or make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.

31. As to the LDC appeals, the overriding issue taking into account, but ultimately irrespective of, the reasons of the Council, is whether the refusals of the applications were well-founded.

32. For the use to be immune from enforcement action the appellant must show on the balance of probability that what is alleged in the notice occurred ten years prior to the issue of the notice and that the use has been continuous before that date for a full ten-year period. It is settled law that the approach to evidence for LDCs is appropriate in the context of ground (d).

The applicable time limits

33. For Appeals B and C the relevant dates from which continuous use must be demonstrated are respectively 5 July 2011 and 28 September 2011, ie for a period of ten years prior to the date of the applications, however a prior period of ten years might be established which had not subsequently been lost through abandonment, a new chapter in the planning history and so forth. The relevant period in ground (d) is ten years from 15 June 2011.

34. I read the notice, in referring to the erection of buildings "to facilitate" the use, as alleging that the operational development is part and parcel of the use and therefore subject to the ten-year period as for the use itself.

35. The appellant's case was that the use and a garage building had been in place since he started work full time from home in 2011. It relies on an alleged continuous use throughout that period, including that the building latterly erected was by way of reinstating the previous triple bay garage (original garage as extended) damaged by fire and then demolished.

36. It is well established (*Iddenden v Secretary of State for the Environment [1972] 1 W.L.R. 1433*) that if a landowner pulls down old buildings and erects new ones without planning permission, an enforcement notice requiring demolition of the new is valid, even though it does not require restoration of the old. It was noted there that if applicants had lost an established use attached to the buildings they pulled down and are thereby worse off, they can only blame themselves and not the planning authority.

37. It is argued on behalf of the appellant that a replacement building can be put to the existing lawful use of the planning unit as was held in *Jennings Motors v SSE [1982] JPL 181*. That is correct in principle, however where a building is demolished and replacement buildings are erected without the benefit of planning permission, the only lawful use is that of the land. There are no existing rights to have buildings on the site as was held in *Hancock v SSCLG & Windsor and Maidenhead RBC [2012] EWHC 3704*.

38. Ultimately it is *Iddendum* that controls here, for a use cannot survive the destruction of buildings and installations necessary for it to be carried on. Here, the original garage building was necessary for the authorised use to be carried on, given the nature of the 2014 permission and condition requiring strict adherence to the approved plans.

39. Furthermore, the appellant seeks to use the 2017 email from the enforcement officer, where it refers to the extended garage building then in situ as permitted development. The officer had stated:

    "*The recent outbuilding is physically permitted development under the law. No material change of use has occurred and as per the written agreement with the owner it can only be domestic/low impact business use (non-material). For example, a workshop, storage or hobby room is fine, again any noise issues can be dealt with by environmental services as a non-planning issue. It can be used for business purposes but in order for it to remain a non-material change it must remain wholly subordinate to the residential use of the property*"

40. The appellant appears now to accept that the extension to the garage accommodation was not permitted development but maintained that the

customer car that caused the fire was lawfully parked in the bay ostensibly meant for domestic use, whilst waiting for the main business bay to become available. In any event however, the extended garage or "recent outbuilding" was unauthorised as it did not benefit from planning permission.

41. As to the wider use of the site, if in 2014 for example it was being used for repairs to the extent that it displaced the sole primary residential use of the plot, the appellant did not make this at all clear in the planning application. I agree with the Council's planning witness that the 2014 permission created two planning units. The original garage became a separate entity from the domestic curtilage of the plot due to the specific and restricted scope of the permission. I note it was set to one side of the plot away from the main house and driveway. Parking of customers' cars at the garage entrance or close by would be an incidental or ancillary use to the main industrial use of the garage (and there would have been a minor overlap in uses where part of the driveway may inevitably have been used for residential and customer use). However the 2014 permission never encompassed industrial activity or ancillary use outside the original garage. Any such external ancillary use might have served to extend the planning unit and ultimately to gain immunity but would have ceased with cessation of the primary use.

42. The appellant made the application himself, initially including a plan with the red line boundary covering the whole site and the garage footprint edged blue. He says he was asked to amend the plan to show the red line tightly drawn around the garage which he did. Heavy emphasis is laid on the supposition that he was given no choice in the matter. However it would be perfectly proper for the Council to suggest to him that the red line should go around the precise area of the site in which he was interested in obtaining planning permission. The permission logically linked the permitted car repair use to use inside the existing building. In his statement sent in with the application he described the wider site as a family home and owner's work base but also clearly stated: "*I work from the existing garage*".

43. It was not until 2019 that business rates were paid for a "*workshop, Brickfield Cottage*". An accountant supplied a summary of trading for financial years 2013/14 up to and including December 2020. However the accountant was only employed from 2016 and stated that figures before then were based on "*accounts and records which we did not prepare for the previous two years".*

44. I have carefully considered the evidence including those tables showing names of customers invoiced, vehicle registrations, dates and payments received, and an email of June 2021 from R's supplier of car parts stating: "*we have been delivering car parts* [at the appeal site] *from April 2011 on a daily basis*". I was told that the appellant worked on 3 to 4 cars per week but it was "*double that*" when the business "*took off*" although it was unclear exactly when that was.

45. Of the aerial photographs submitted, that taken in October 2017 shows 4 cars parked on site and nothing that suggests a wider business activity. However as R stated in his declaration "*I have always consciously [sought] to maintain the look of a residential property and not allowed the business to dominate."*

46. In the image dated April 2021 8 vehicles are shown on site. Further images from the enforcement officer's visit show that the garage was operating as an industrial activity, but no evidence of it spilling out into the wider curtilage.

Photographs at the time of the 2014 application show the internal appearance of the original garage and surrounding site. I agree with the Council that it was then domestic in character and appearance, with no evidence of industrial activity outside the confines of the garage. It could not have reasonably concluded a breach of planning control was continuing when it visited such that it could have taken enforcement action elsewhere on the wider site.

47. I return to the erection of the new garage building. The level and significance of complaints made in the last two or three years is disputed but the Council was notified in February 2021 that works had begun on footings for the new 3 bay garage to replace what went before. Its increased size provides some indication of an increase in activity. H was unable to counter the evidence that the new garage is bigger than what was there before the fire, it being some 124 sqm x 117 sqm and with an increased height. I saw that although it may have had some part of the original floor and the northern wall retained, to all intents and purposes it was a new and enlarged building embracing all three bays with a uniform roof and structural steel frame.

48. I questioned H about the apparent contradiction between his firm's statements that the garage was or had been permitted development, and yet his case seemed to be that there was a mixed use that had gained immunity through the passage of time. It is commonly understood that a mixed use is a sui generis use which by its very nature does not benefit from permitted development rights. I queried whether there could be any dormant uses that might assist the appellant, over the footprint of the original garage and/or the wider site. Although the case for the appellant confirmed in closing, was that there were indeed two established primary uses on the land, ie residential and car repairs, I am not persuaded of this by the evidence.

49. Clearly, some car repair use occurred in the immediate curtilage of the original garage. Also, it is likely that the appellant's use of the site from 2006 up to the 2014 permission being granted, included some use for car repairs. According to his wife who knew him at the site from 2010 and lived there from 2013, the repair business was carried on "*anywhere and everywhere*". The appellant was a vehicle technician, employed elsewhere when he moved to Brickfield Cottage. He supplemented his income by working for himself at evenings and weekends at the appeal site, as he put it "*discreetly wherever I can*." On 1 April 2011 he left his job and developed his business full-time on the site.

50. I readily accept that over the years some of his work has occurred in places such as the afore-mentioned scruffy shed, the lawn at the rear of the house and another shed that was for a time erected by the entrance gate. Despite the wide-ranging spaces claimed to form the basis of an established primary use over the whole land, the appellant's own declaration sought to play down the intensity of the industrial activity, to "*maintain the look of a residential property and not allow…the business to dominate*".

51. The view expressed by the Council's planning witness was that such use was insufficient to sustain a finding of a material change in the use of the property. I agree. The original garage was clearly in domestic use until renovated for car repairs around 2010/2011 after which there was an unlawful non-residential use which was regularised by the 2014 permission.

52. Several parts of the appellant's own testimony under oath I found to be variously evasive, blasé, and at times argumentative, even belligerent towards the Council's advocate. Despite the twists and turns of his replies I am in no doubt that he regarded a garage building as essential to carry on his business at the appeal site. What became and remained the primary focus of such use was indeed the buildings he used, the original garage (in which the car lift was introduced in 2011 and noise insulated to prevent disturbance to neighbours), which was then unlawfully extended to form additional bays, and the new steel framed structure erected after the fire without planning permission.

53. I do not accept on the evidence that it was likely that the appellant's activities around the wider site ever established a primary use. It is more likely that his use of the wider site was never significant enough to change the primary use from residential other than when, after the fire in 2020 he clearly moved the repair activities to whatever place he could, including in temporary structures until the new unauthorised garage was serviceable, prompting the enforcement notice attacking that building and the material change of use of the wider site.

54. The evidence does suggest that cars were inspected and in good weather could sometimes be repaired on the drive in front of the original garage, ie outside the red line boundary of the 2014 permission. However, vehicle repair outlets are usually classified in a similar way to B2 industrial units where noisy works occur and need to be controlled. The application form stated that industrial processes and machinery were to be used, ie "*diagnostics, servicing & maintenance of cars & small vans. vehicle lift/tyre changing machine/wheel balance/hydraulic press/wheel alignment gauges*." It would have been for that reason that the use was restricted to within the building. There might possibly have been tolerated some ancillary or de minimis parking activity found to be necessary at the entrance. However, anything of that nature would be lost with destruction of the subject matter of the permission.

55. The evidence of neighbours, customers and relations is imprecise about numbers of vehicles, the works occurring, location, timings and periods of observations. They do not provide robust support to a finding on the balance of probability of a continuous car repair use for the wider site for any 10 year period. Statutory declarations support the appellant's case in generalised terms, they do not materially add anything potentially determinative of this issue as to the precise extent or continuous periods of car repair activity at the site. I am of the view that this evidence is insufficient to demonstrate continuous use for car repair and maintenance use on the site for ten years without interruption.

56. The onus is on the appellant to prove his case on this issue, on the balance of probability, using evidence that is precise and unambiguous. In short, the fire in October 2020 interrupted the lawful use of the original garage. The unlawful extension or additional bays constructed in 2017 were also destroyed. I find that the material change of use of the land described in the notice from use for residential to a mixed use for residential and motor vehicle repair and maintenance did not on the balance of probability subsist until sometime in 2021 when the original garage had been destroyed, and the appellant began operating his industrial business from the timber garage in front of the main dwelling (now also removed) and the large new garage building, still very much in evidence.

57. Accordingly I find that the wider site was not in a mixed use continuously from June 2011 to June 2021. Therefore, Appeal A on ground (d), Appeal B and Appeal C fail.

Ground (c)

58. Success on this ground requires the appellant to show on the balance of probability that the matters stated in the enforcement notice do not constitute a breach of planning control. The appellant's case in his statement was that the 2014 permission could not "*lawfully be withdrawn*", the Council's report at that time showed it was aware the business operated at the same capacity as from April 2011, and therefore the business use was lawful.

59. I do not accept this argument, as appears from the matters discussed on ground (d) above. The notice clearly extends to the use of the wider site and to operational development outside the confines of the red line boundary subject to the 2014 permission. The building now in situ requires planning permission. The 2014 permission only permitted a use to be carried on inside the specified building, ie the original garage. It cannot be effective without that building.

60. The appellant made additional arguments at the inquiry, that the actual use of the land for car repairs could continue as approved by the 2014 permission despite the subject matter being destroyed. It was claimed that "*no changes or operational development to the land took place*". That is patently incorrect. After the fire the appellant replaced what was there before with a new and different structure. For a use to be lawfully capable of being continued, I would agree with the appellant that a permission could be expressly sought for the rebuilding of a structure, but no such permission was granted. It is accepted that the building in situ was not lawfully erected as permitted development.

61. Therefore, the appeal on ground (c) does not succeed.

Appeal A on ground (a) and Appeal D

62. The appeal site and its surroundings are described earlier in this Decision. I recognise that the site is bounded largely by agricultural fields but the northern part especially, derives its character more from the small group of residential dwellings that it adjoins.

63. The new garage has a substantial scale, size and mass although it sits in one corner of a large plot where it is prominent but subsidiary in basic form (not design) to the dimensions of the large main dwelling that sits centrally within the front part of the curtilage. However, the garage presents as an overbearing development in relation to the plot at Lilac Cottage where it abuts the boundary. Furthermore, its industrial appearance garage detracts considerably from the character of the main dwelling and the domesticated nature of the rest of the plot. Over time a significant amount of vegetation has been removed from where the garage is sited to facilitate building works, now not allowing for landscaping that might otherwise be secured by condition to visually attenuate impacts on wider views of the site or neighbouring property.

64. I agree with the Council that the new garage significantly harms the character and appearance of and is significantly out of keeping with the main house and the surrounding residential plots.

65. It is claimed that only one bay is to be used for the car repair business use. When I visited some items of domestic use were apparent but all three bays were unpartitioned inside, and full of various items of specialised equipment associated with an industrial car repair and maintenance use. Such a use is inherently a noisy activity use that potentially would impact and has clearly impacted adversely on the living conditions experienced by neighbours close by. Something was made of the fact that the appellant has or would ensure that the car repair and maintenance activities would take place in the bay furthest from Lilac Cottage but the effect in my judgement would be marginal if not negligible, given the building's location so close to the boundary and the inevitable noisy activity that would take place from time to time in close proximity to the garage entrance. The potential for harm by reason of noise and disturbance as a result of such industrial activities is considerable.

66. I have considered whether a condition or conditions could mitigate the potential for noise complaints emanating from neighbours and present or future occupants of Lilac Cottage in particular. Without understanding what level of impact has been assessed if at all against ambient noise levels, or any specific and measurable controls that might be put in place I am not confident that the potential harm to surrounding residents including future residents, from such noisy industrial activity would be adequately mitigated. The history of complaints from neighbouring property adds to my concern, as does the size of the new building and its propensity for increased industrial activity that it presents, including potential for disturbance from an increase in non-residential traffic along the access close to other residential plots.

67. There would be some economic benefits to the use. The loss of personal economic benefits and the loss of the business operating from within the site would likely cause some hardship to the appellant and his family. A section of the local community clearly use the appellant's services. The wider economic benefit to customers many of whom live or work locally, carries weight. I mentioned in a pre-inquiry note the possible relevance of the dictum of Lord Scarman in *Westminster City Council Appellants v Great Portland Estates Plc [1985] 1 AC 661*. In addition the National Planning Policy Framework (NPPF) supports the creation of jobs and in general significant weight should be given to supporting sustainable economic growth. Shropshire Core Strategy 2011 (CS), Policy CS5 does not materially assist the appellant in this regard because it qualifies support for beneficial rural development with the need to consider the scale and design of proposals, where development is most appropriately sited, and what would be the environmental and other impacts.

68. Although submissions were made on these matters and I took account of the appellant's own testimony and of others given in support, there is not a sufficiently specific case advanced to quantify the benefit to the wider community such that I could accept it as an exception to the relevant planning policies. Sustainable growth implies a balance to be considered among all three elements of sustainability, including social and environmental effects.

Other matters

69. There is no "fall-back" of being able to have a garage for domestic purposes on the site of the new garage building that the appellant says would be permitted development. At issue is the industrial use of the site for car repairs and maintenance and the erection of a building with a single frame and structure.

Permitted development rights attach to lawful development and if the notice is upheld and complied with, such rights may be exercised but they do not weigh in favour of granting permission here for the matters covered by the notice.

70. The local highway authority for the area was consulted on the proposal leading to Appeal D and had no objection. The proposed access shown on the block plan submitted with the application in principle provides a suitable means of vehicular access and egress to and from the site. However that does not reduce the concern expressed above as to the potential effect on living conditions.

71. I agree in large part with the opinions expressed by the Council's planning witness. Suffice it to say that hers was an object lesson in how to set out a proof of evidence. Despite having limited planning experience and the attack made on her credibility as a planning witness, I found her evidence to be considerably more succinct and helpful about matters of planning judgement than any other. If professional judgement is defined as applying knowledge, skills and experience, in a way that is informed by professional standards, although the person concerned may not yet be fully professionally qualified, as a member of a relevant planning professional body they would be entitled in my view to refer to their expert professional judgment in such matters.

Conclusion

72. I find that the development would cause harm in particular to the character and appearance of the host dwelling and garden area and of Lilac Cottage in particular, as well as to the wider area. The harm is considerable and conflicts with Shropshire Core Strategy 2011 (CS), Policy CS6 and Policy MD2 of the Council's Site Allocations and Management Development Plan 2015 (SAMD). These policies seek new development that is sympathetic to the size, mass, character and appearance of the original property and the surrounding area.

73. The development would also cause very significant harm to the living conditions of the present and future occupiers of Lilac Cottage especially, by reason of the potential for noise and disturbance, as well as to other residents including future residents in the immediately surrounding area. Such harm is contrary to the aims of CS Policy CS6 by failing to demonstrate how the development would contribute to the health and well-being of communities and safeguard residential amenities of nearby residents including future residents.

74. The conflict with the above key policies of the development plan would not be overcome by the benefits of the development, having regard to the case put forward by the appellant, and support given in national and local policy to economic growth that is sustainable. The overall balance is that the weight I give to the adverse environmental and social effects of the development clearly outweighs the economic benefits. Further in this respect I find that CS Policy CS5 is not an overriding factor here and the development conflicts with the development plan as a whole.

75. Accordingly I shall refuse planning permission in respect of Appeal D and for the deemed application arising from Appeal A under s177(5).

Appeal A on ground (f)

76. An appeal on ground (f) is that the requirements of the notice exceed what is necessary to remedy the breach of planning control or, as the case may be, to

remedy any harm to amenity resulting from the breach. From the requirements of the notice I take its purpose to be to remedy the breach of planning control.

77. The differences between the original and new building in situ are more than marginal only. I have already made findings about the unacceptability of the new building in situ on the planning merits. Accordingly, and since the aim of the notice is clearly to remedy the breach of planning control that has occurred, I find that subject to the matter of the north wall, there is no obvious alternative that might be pursued at lesser cost.

78. The north wall may be part of the original garage. On site it was difficult to determine what support if any was given by this wall to the garage within Lilac Cottage. I asked whether there was in effect a party wall arrangement but the position was unclear. But if the appellant is right in that it formed part of the original garage owned by him, and the garage at Lilac Cottage was built up against it without constructing their own wall, this is a type of party wall such that its removal could in certain circumstances cause difficulty for the adjoining owner. The appellant requests its retention and I see no good reason to require its removal, although I obviously disagree with the suggestion made on his behalf that such an amendment to the requirements in the notice would work an injustice to the appellant.

79. Otherwise, the requirements of the notice to remove the buildings and cease the unauthorised use are not excessive to remedy the breach of planning control. The appellant has not submitted any other alternative steps for me to consider. The appeal on this ground succeeds only to the extent that the requirements of the notice will be varied accordingly.

Appeal on ground (g)

80. Demolition and removal of the remaining building subject to the enforcement notice could be effected within a matter of days. A period of 3 months is quite reasonable within which to make the necessary arrangements for that work to be undertaken.

81. There is no evidence before me that practical difficulties exist in complying with the requirements of the enforcement notice, save that a little more time than 7 days may be required to arrange matters with customers and prospective customers before the use must cease. Therefore I will extend the period for compliance with section 6(i) to 21 days.

82. The appeal on ground(g) succeeds to that extent.

Conclusion on Appeal A

83. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and variations and refuse to grant planning permission on the deemed application.

Conclusion on Appeal B

84. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of a mixed use of land as a residential use and a car repair/maintenance business use was well-founded

and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Conclusion on Appeal C

85. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of a mixed use of land as a residential use and a car repair/maintenance business use was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Conclusion on Appeal D

86. For the reasons given above I conclude that the appeal should be dismissed.

Formal Decisions

Appeal A

87. It is directed that the enforcement notice be corrected and varied as follows:

- In section 3, replace "operation" with "operational".
- In section 5 before "demolish/dismantle" delete "To" and replace "demolish" with "Demolish".
- In section 6(i) replace "7 days" with "21 days".
- In section 5(ii) insert after "garage marked 'X', "save only for the wall on its northern elevation abutting the boundary with Lilac Cottage".

88. Subject to these alterations the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B

89. The appeal is dismissed.

Appeal C

90. The appeal is dismissed.

Appeal D

91. The appeal is dismissed.

Grahame Kean

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Dr Robin Hooper	Solicitor, managing director of Heals, Planning Associates

He called:

PR	Appellant
JW	
JM	
KR	
JM	
TD	
SG	
RR	
Himself	

FOR THE LOCAL PLANNING AUTHORITY:

Piers Riley-Smith	Barrister

He called:

Emma Green	Senior Planning Enforcement Officer
Gemma Price	Planning Officer

INTERESTED PERSONS

GS	in support of appellant
KR	in support of appellant
KM	in support of appellant
PM	in support of appellant

Additional documents submitted at the hearing:

CD1	Policy CS6
CD2	Policy MD2 and supporting text
CD3	Aerial photos (part of Council's SoC in enforcement appeal)

CD4	3 letters in support of the appeals
CD5	Opening statement by Council
CD6	Bundle of 17 statutory declarations
CD7	Appendices to Dr Hooper's proof as exchanged with the Council
CD8	Policy CS5 submitted by appellant
CD9	Extract from delegation scheme, date unknown submitted by appellant
CD10	Expediency Report submitted by Council
CD11	Delegation Scheme, art 8 submitted by Council
CD12	Delegation of planning functions submitted by Council
CD13	[see CD8]
CD14	Policy CS5 and supporting text submitted by Council
CD15	Unilateral undertaking dated 27 June 2023
CD16	Land Registry copy register of title and plan
CD17	Reply of Council to costs application

Documents submitted after the hearing:

CD18	Closing submissions of Council
CD19	Closing submissions of appellant