

## Planning Enforcement Report for 0095/2019



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## Report to Planning Committee

**Reference Number:** 0095/2019

**Location:** Land at 293 Mansfield Road, Redhill

**Breach of Planning Control:** **Material change of use of residential dwelling and garden (Use Class C3) to a mixed use of residential dwelling and garden (Use Class C3) and a car sales business (sui generis) and storage of vehicles in connection with that business (Use Class B8).**

### 1 Background

- 1.1 No. 293 Mansfield Road is a large detached dwelling in a wholly residential area of Redhill. It is a corner property facing onto the busy A60 Mansfield Road with its side elevation on Redhill Lodge Drive and the rear garden along Redhill Drive.
- 1.2 There is a hedge and private access road leading from Redhill Lodge Drive and separating the property from the A60. The private access road provides access to the frontage of this property and four other neighbouring dwellings.
- 1.3 No. 293 has a large garden area which extends around all four sides of the property. In March 2019, it was brought to the Council's attention that the front garden which extends to approximately 400 square metres was being hard paved.
- 1.4 The Council's enforcement officer attended the site and it was found the hard paving was permitted development as adequate drainage had been provided in accordance with the General Permitted Development Order (GPDO).
- 1.5 However, during a conversation the owners' admitted that they intended to use the garden frontage in connection with their car sales business at some time in the future.
- 1.6 The owners were advised such a business would require planning permission and it was unlikely permission would be granted for a car sales business in a residential area.
- 1.7 On the 18<sup>th</sup> March 2019, a formal letter was sent to the owners of the property explaining that planning permission was required for the change of use of

the residential garden for car sales and that if such a business was to operate from the property without planning permission it was likely the Council would take enforcement action. The owners verbally agreed they would not sell vehicles from the property and the file was then closed.

- 1.8 In May 2019, it was brought to the Council's attention that car sales were taking place from the property. The car sales business is known as 'Reliable Cars 4 You' and is registered at Company's House to No. 293 Mansfield Road, Redhill with both owners of the property being named as directors of the car sales business.
- 1.9 The company web site clearly shows vehicles for sale which have also been seen parked on the drive way of the property. Neighbours have complained that buyers were attending the property and test driving vehicles and that they have seen documents handed over in the street before the buyer drives away in a vehicle.
- 1.10 In addition evidence showed the cemetery car park off Mansfield Road was being used to photograph the vehicles for sale, ready for advertising.
- 1.11 When approached again, the owner gave a written undertaking that they would cease the use of the cemetery car park and the operation of the business from their home premises. However, the owners simply relocated their vehicle stock to Sainsbury's car park and after pressure from the owners of Sainsbury's car park, then moved the vehicles on to the car park at the Ram Inn.
- 1.12 Recently, customers have continued to visit the owners at their home leaving their own car at the residential premises before being transported to the Ram Inn to view and test drive vehicles. Witnesses have stated they are still seeing paper work being exchanged in the street or on the drive way of No. 293.
- 1.13 Some vehicles associated with the business are still being stored at the residential premises while approximately 30 – 40 vehicles are stored in the Ram Inn car park off Mansfield Road. The brewery who own the Ram Inn car park have said the car sales business is operating without their permission and have instructed the owners of the car sales business to remove the vehicles.
- 1.14 The business is still registered to the home address, which in itself may not be a problem but is an indication the business is still operating from No. 293 as well as from the Ram Inn car park.
- 1.15 The owners have stated they have difficult personal circumstances and have once again promised to cease the unauthorised business but have asked for time to find official garage premises. Despite this undertaking, the owners

have said even when they find alternative garage premises they will still need to store some vehicles at home.

## **2 Planning History**

2.1 There is no planning history for this property

## **3 Assessment**

3.1 No. 293 Mansfield Road is a residential property in a popular residential area of Redhill. The narrow private poorly maintained access road leads onto a small estate road which in turns leads into the very busy A60 where the speed limit is 40mph. Vehicles for sale have been seen displayed in the front garden of the property and on nearby side roads and in various privately owned car parks belonging to businesses to which the public have access.

3.2 The use of the dwelling to operate a car sales and associated storage business is not incidental to the enjoyment of the dwelling house and the use of various public car parks for storing and selling vehicles also requires planning permission. No such permission has been applied for nor granted.

3.3 Although development has occurred without planning permission and is therefore unauthorised, local planning authorities are required to consider government guidance when deciding whether to take planning enforcement action. Government guidance is found in the National Planning Policy Framework (NPPF) (Paragraph 58) and states that although effective enforcement is important as a means of maintaining public confidence in the planning system, ultimately enforcement action is discretionary and local planning authorities should act proportionately in responding to breaches of planning control.

3.4 The main considerations when deciding whether to take enforcement action in this case are;

i) whether the use of the dwelling and various public car parks for car sales and an associated storage business has any detrimental effect on the amenities of the occupiers of nearby properties, on character of the area or the environment, or highway safety.

ii) whether the Local Planning Authority is within the ten year statutory time limit for taking action for a material change of use of the land.

### Planning policy considerations

3.5 The fundamental aim of the NPPF is that the planning system should achieve sustainable development by three overarching objectives and in doing so should take local circumstances into account to reflect the character, needs and opportunities of each area. It attaches great importance to positive

improvements in the conditions which people live and work and paragraph 130 of the NPPF states that “Permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions...”

- 3.6 At the local level, Policy 10 of the Greater Nottinghamshire Aligned Core Strategy (2014) seeks to proactively promote good design and reinforce valued local characteristics. In order to achieve this, the policy approach sets out a number of criteria to reinforce valued local characteristics.
- 3.7 Policy LPD 32 of the Local Plan Document seeks to protect the amenity of nearby residents or occupiers and Policy LPD 34 seeks to protect residential gardens and aims to ensure any development does not result in harm to the character or appearance of an area.
- 3.8 Policy LPD 35 requires the massing, scale and proportion of development should be appropriate to the immediate context, site constraints and the character of the surrounding area.
- 3.9 Policy LPD 61 states that “Planning permission will only be granted for development proposals which do not have a detrimental effect on highway safety...”

#### Impact on residential amenity

- 3.10 It is considered that the large number of vehicular movements associated with the car sale use and increased visitors to the residential premises is detrimental to neighbours’ amenities and causes noise and disturbance to the occupiers of nearby dwellings affecting their enjoyment of their homes. The use is contrary to LPD Policy 32 and Policy LPD 34

#### Impact on the character of the area and the environment

- 3.11 This area of Redhill is characterised by well-kept and well-presented residential properties. There is no other commercial use in the immediate vicinity. There is an open view into the newly formed hard surfaced garden area of the property when travelling southbound along the A60 and when travelling along the adjacent private road and Redhill Lodge Drive.
- 3.12 The front garden of the property in this location with an unusual number of vehicles displayed is an alien feature and detrimental to the character to the area. The additional vehicular movement and visitors associated with the business is detrimental to the character of the area.
- 3.13 Policy LPD34 seeks to protect residential gardens from development and states planning permission should be refused for development in residential gardens unless development proposals would result in a significant

improvement to the urban design of an area. It goes on to advise that “in all cases, any development of residential garden land should not result in harm to the character and appearance of an area. Development involving front gardens should ensure the character of the street scene is not harmed and that appropriate boundary treatments and planting are retained”. The use is therefore in conflict with Policy LPD34.

- 3.14 The use of Sainsbury’s or the Ram Inn car park is taking up valuable parking spaces which may restrict parking for customers and which will increase vehicular movements to the detriment of safety in the car park especially if the driver is not familiar with the vehicle.
- 3.15 The use of both the residential garden and local public car parks is also contrary to the advice given in the NPPF and Policy 10 of the ACS and Policy LPD 35 of the Local Plan.

#### Impact on highway safety

- 3.16 The use of public car parks for parking or storing vehicles for sale may displace others needing to park in connection with the lawful use of the car park. It is considered the use is therefore contrary to LPD Policy 61.

#### Time Limits

- 3.17 The statutory time limit for taking action for a material change of use of the land is 10 years. In this case the evidence available to the Council strongly suggests that the car sales business has been operating from the site in the last 18 months and the Council is within time to commence enforcement proceedings such as issuing an enforcement notice requiring the use to cease.

#### Human Rights

- 3.18 Under the Human Rights Act, it is necessary for the Authority to have regard to the rights of the owner and occupier of a site under Article 1 of the First Protocol to peaceful enjoyment of possessions and the protection of property and under Article 8 of the convention to respect for his private and family life, his home and his correspondence except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.
- 3.19 In considering whether to take any enforcement action, the Council has to consider the proportionality of its actions. In other words whether the proposed action would be proportionate to the objective being pursued – here the enforcement of planning control in support of National and Local Planning

Policies. It is recognised that issuing an enforcement notice, or pursuing formal proceedings in the Magistrates Court if the notice is not complied with, will result in interference with the recipients' rights. However, it is considered that issuing a notice in the first instance would be a proportionate response to rectifying the breach of planning control taking place and depending on compliance with the notice it might well be justified to take court action including an application for an injunction to stop the roving use moving from car park to car park or other land.

### Equalities

- 3.20 The Council's Planning Enforcement team operates in accordance with the Council's Planning Enforcement Policy and is largely dictated by legislation which reduces the risk of discrimination in this service. The Council is accountable to the public, including its stakeholders, for its decisions both to take enforcement action and not to utilise its enforcement powers. There is a legitimate expectation of the public and stakeholders that the Council will take action to address breaches of planning by such means as are appropriate in the individual circumstances and which are in accordance with the Council's policy and government legislation.
- 3.21 The Council strives for a consistent approach in targeting its enforcement action. This means that the Council will take a similar, but not the same, approach to compliance and enforcement decisions within and across sectors. It will strive to treat people in a consistent way where circumstances are similar. Each case however will be evaluated on the basis of its own facts and circumstances but will ensure that decisions or actions taken in any particular case are consistent with the law and with the Council's published policies. It should be noted that decisions on specific enforcement actions may rely on professional judgment. The Council will usually only take formal enforcement action where attempts to encourage compliance have failed as in this case.

### Crime and disorder

- 3.22 The Crime and Disorder Act 1998 places a duty on the Local Planning Authority to do all that it reasonably can to prevent crime and disorder in its area. The potential impact on the integrity of the planning system and the setting of a precedent if action is not taken is therefore a material consideration in the authorisation of enforcement proceedings.
- 3.23 In light of all the facts it is now considered expedient to serve an enforcement notice to require the cessation of the unauthorised car sales and storage use of the vehicles in connection with that business and which are not considered incidental or ancillary to the domestic residential use of the dwelling and if necessary further enforcement notices or other action including an application

to the courts for an injunction to ensure the unauthorised use is not moved from one parcel of land to another within the Borough.

#### **4 Conclusion**

- 4.2 Although the owners have given verbal and written undertakings to cease the use of their residential premises for the car sales business, the owners have stated they will still need to use their front drive way to store some vehicles at home. In any case the owners of the business have previously promised to cease the business activities from home but have failed to do so.
- 4.3 The owners of the public car parks which are being utilised by the owners of the unauthorised car sales business have required the car sales business to cease to operate from their land but again there is no guarantee this will happen or that the car sales will not simply be relocated to another unauthorised site.
- 4.4 The breach conflicts with both national and local policies. Negotiations with the owners have failed to rectify the breach and failure of the Council to act in these circumstances may leave local residents with a business which adversely affects their well-being and is detrimental to the character and amenity of the area and which is beyond the control of the Council.
- 4.5 The Council should now commence enforcement action without delay by issuing a planning enforcement notice requiring the cessation of the unauthorised business, removal of the vehicles which are not incidental to the enjoyment of the dwelling. If the notice is not complied with proceedings should be taken in the courts if necessary.
- 4.6 Other car parks and land in the area should be monitored and if the business continues to be moved from site to site an application should be made to the courts for an injunction.

#### **5 Recommendation**

- 5.1 That the Service Manager, Development Services, be authorised to take all enforcement action including the service of any necessary enforcement notices and in conjunction with the Director of Organisational Development & Democratic Services take proceedings through the courts including the application for an injunction if required to ensure;**

**(a) the cessation of the unauthorised car sales business from any land where permission has not been granted for a car sales use**

**(b) the removal of all vehicles which are not incidental or ancillary to the domestic residential use of the dwelling or the lawful use associated with any other land on which the business is located.**