



Planning Enforcement Report for 0104/2021



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Report to Planning Committee

Reference Number: 0104/2021

Location: 4 Angela Close Redhill.

Breach of Planning Control: **Material change of use of residential dwelling (Use Class C3) to a mixed use of residential dwelling (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 The Council received complaints about a car sales business operating from No. 4 Angela Close, Redhill in April 2021. Evidence of such activity was provided by the complainants. Photos and registration logs showed cars were being sold from the property by the tenant with purchasers viewing cars and paperwork being exchanged on the driveway associated with the property and in the street. Internet adverts for the same vehicles demonstrated that a business was being operated from the address. In addition, vehicles were being prepared for sale at the premises with vacuum cleaners photographed in use on vehicles and visits from valeting companies. The activity was noted at various times of day, including late at night.
- 1.2 The Council wrote to both the owner and tenant of the property in May 2021 advising that the business use was unauthorised and should cease immediately. In response to the letter, the owner wrote to his tenant on 3rd June advising that any business use ceases. Despite contact from the Council and owner of the property, the business activity continued.
- 1.3 A Planning Contravention Notice (PCN) was served on the tenant and property owner on 6th July. The owner responded saying he was not aware of any business activity at the property. To date the tenant has not returned the PCN.
- 1.4 On 24th August there was another car on the drive for sale with an associated internet advert. The car was later photographed being sold by the tenant on the street on 7th September. On the 14th September the Council received reports of another vehicle on the driveway awaiting sale.
- 1.5 The property transferred ownership on 21st July 2021. The managing agent for the new owner made contact with the Council on 15th September following a further letter from the Council. They advised they had written to the tenant stressing that the activity ceases.

- 1.6 The tenant made first contact with the Council via email on 15th September. He gave assurances that he would cease the activity. He admitted to selling “a few cars a month” but disputed that it amounted to a breach of planning control. The Council has, however, received reports that cars are still being stored at the property in relation with the business.

2 Site Description

- 2.1 Angela Close is a residential cul de sac within the built up area of Redhill comprising of detached two storey properties. No 4 Angela Close is located at the end of the cul de sac adjacent to the turning head.
- 2.2 The property has off road parking for two vehicles to the front.

3 Planning History

There is no relevant planning history.

4 Assessment

- 4.1 No.4 Angela Close is a residential property in the built up area of Redhill. The property is situated on a small cul de sac accessed off Lodge Farm Lane.
- 4.2 The use of the premises to operate a car sales business is not incidental to the enjoyment of the dwelling house and requires planning permission. No such permission has been applied for nor granted.
- 4.3 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 59) 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.
- 4.4 The main considerations when deciding whether to take enforcement action in this case are;
- i) whether the use of the site for a car sales business with associated storage of vehicles has any detrimental effect on the character of the area or the environment, on the amenities of other occupiers of nearby dwellings or on 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

- 4.5 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 134, the NPPF states that “Development that is not well designed should be refused, especially where it fails to reflect local design policies and government guidance on design”.

- 4.6 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.
- 4.7 Policy LPD 32 of the Local Plan Document seeks to protect the amenity of nearby residents or occupiers. This takes into account issues including noise, level of activity on site, traffic and residential visual amenity. Furthermore, 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.
- 4.8 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. It states that “small scale development that is insensitive to existing character can have an adverse impact on the sense of place.”
- 4.9 Policy LPD 61 states that “Planning permission will only be granted for development proposals which do not have a detrimental effect on highway safety, patterns of movement and the access needs of all people.”

Impact on the character of the area and the environment

- 4.10 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.
- 4.11 This area of Redhill is characterised by well-kept and well-presented residential properties. There is no other commercial use in the immediate vicinity. The operation of a car sales business is an alien feature at a residential property and is out of character for this residential street. The additional vehicular movement and visitors associated with the business is detrimental to the character of the area. The use is therefore in conflict with the NPPF and Policy 10 of the ACS and Policy LPD 35 of the Local Plan.

Impact on residential amenity

- 4.12 It is considered that the level of activity on site and number of vehicular movements associated with the use is detrimental to neighbours’ amenities and

will cause noise and disturbance to the occupiers of nearby dwellings affecting their enjoyment of their homes. The use is contrary to LPD Policy 32.

Impact on highway safety

- 4.13 It is considered the business is likely to cause an increase in vehicle movements, with customers viewing and purchasing vehicles. Evidence submitted to the Council indicates that the highway is being used to park vehicles that are for sale as well as those of customers. It is noted that at times, vehicles associated with the business activity are being parked in the turning head of the cul de sac and across neighbouring driveways, resulting in little room for other users of the road to turn vehicles around or access property.
- 4.14 The unauthorised car sales operating from No. 4 Angela Close is in conflict with the above policies which all seek development of a high standard and development which does not adversely affect the area in which it is located but provides good living standards and which makes a positive contribution to the public realm and sense of place.

Time Limits

- 4.15 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 for less than 10 years and the Council is within time to commence enforcement proceedings such as issuing an enforcement notice requiring the use to cease.

Human Rights

- 4.16 Under the Human Rights Act 1998, it is unlawful for a public authority to act in a way which is incompatible with a right under the European Convention on Human Rights (the Convention). In this instance under Article 1 of the First Protocol of the Convention: Protection of Property, every person is entitled to the peaceful enjoyment of their possessions except in the public interest and subject to conditions provided for by law. Furthermore under Article 8 of the Convention all individuals enjoy the right 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.
- 4.17 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 an enforcement notice and pursuing Court action if the enforcement notice is not complied with, would be a proportionate response to the breach of planning control.

Equalities

- 4.18 The Council's Planning Enforcement team 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.
- 4.19 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

- 4.20 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.
- 4.21 In light of all the facts it is now considered expedient to serve an enforcement notice to require the cessation of the unauthorised business use of the land and removal of the vehicles which are offered for sale not considered incidental or ancillary to the domestic residential use of the dwelling.

5 Conclusion

- 5.1 A breach of planning control has been identified which is detrimental to the character of the area, amenities of nearby occupiers of other residential properties and highway safety. Although the tenant has given written undertakings to cease the use of the residential premises for the car sales business, cars are still brought to the site for storage. In any case the operator of the business has been told numerous times since April 2021 to cease the business activities from home but failed to do so.
- 5.2 The breach conflicts with both national and local policies. Negotiations with the tenant and 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.

- 5.3 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 and if the notice is not complied with proceedings should be taken in the courts if necessary.

6 Recommendation

- 6.1 **That the Head of Development and Place be authorised to take all relevant planning enforcement action including the service of any necessary enforcement notices and, in conjunction with the Head of Governance and Customer Services, take proceedings through the courts, if required, to ensure:**

a) the cessation of the unauthorised car sales business including bringing vehicles to the property to be prepared in readiness for sale and storing vehicles awaiting sale at the property;

(b) the removal of all vehicles which are not incidental or ancillary to the domestic residential use of the dwelling.