

Report for Information

APPENDIX 5

Appeal made against the decision of the Council to issue an enforcement notice

Appeal references	APP/P1805/C/10/2138964 APP/P1805/C/10/2138965
Nature of the allegation	Without planning permission, the change of use of the site from residential use to a mixed use for residential and the carrying on of a business concerned with firearms
The requirements of the enforcement notice	(a) Cease the use of the site for the purposes of carrying on the firearms business which is described in paragraphs 3 and 4 of the notice; and (b) Remove from 11 Holly Grove the three phase power transformer, lathe, mechanical drill and blasting machine
Location	11 Holly Grove, Bromsgrove, Worcestershire, B61 8LH
Ward	Sidemoor

The author of this report is Iain Mackay, Senior Enforcement Officer, who can be contacted on 01527 881301 (e-mail: iain.mackay@bromsgroveandredditch.gov.uk) for more information.

Discussion

The main ground of appeal in this matter was that there had not been a breach of planning control.

The main issue of consideration related to the fact that the appellant was a skilled firearms maker and operated a business from the garage of his property. The Inspector noted that the garage of the property was fitted out with a range of equipment in line with that of a small, but well equipped, light engineering workshop.

The Inspector conceded that, in the absence of any planning history, the evidence was strongly supportive of a material change of use to a mixed use as alleged by the Council.

Having said that, the Inspector then referred to the matter of a Certificate of Lawful Use for an Existing Use or Development (CLEUD) as issued by the Council in 2005. That application was received following complaints from residents concerning noise and disturbance.

As a result of that application, the Council issued a certificate which included the wording '*No enforcement action may be taken in respect of the use, because the use is incidental to the enjoyment of the dwelling house as such and does not constitute or involve development.*'

The Inspector went on to consider the issues of noise and listened to the machinery, and also looked at issues of vehicle movements and deliveries to the property, and also the legal implications relating to the existence of the historical CLEUD and its effect on his ability to determine the appeal.

Ultimately however, he concluded that the CLEUD was of paramount importance.

Decision

The Inspector concluded that, above all issues before him, the fact that the Council had previously issued a CLEUD effectively rendered the use of the premises lawful. He considered that, due to its existence, any use described in it must be considered immune from enforcement.

Costs application

An application for costs was made by both the appellant and the Council. In considering this, the Inspector concluded that the Council had, in his opinion, acted unreasonably in its decision to issue the enforcement notice given the existence of the CLEUD and awarded costs in favour of the appellant.

Appeal outcome

The appeal succeeded and the enforcement notice was quashed (6th July 2011)

Recommendation

The Committee is asked to RESOLVE that the item of information be noted.