



Appeal Decision

Site visit made on 19 September 2016

by **K R Saward Solicitor**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 29 September 2016

Appeal Ref: APP/X2410/C/15/3140784

Land at Weldon Road, Loughborough, Leicestershire

- 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 Ms V. Harrison against an enforcement notice issued by Charnwood Borough Council.
- The enforcement notice was issued on 23 November 2015.
- The breach of planning control as alleged in the notice is without planning permission the unauthorised change of use of land for the storage of a container, including associated paraphernalia, for use as a café/shop.
- The requirements of the notice are:-
 1. Cease using the land for the use as a café/shop
 2. Remove the shipping container and associated paraphernalia which includes, but is not limited to, tables and chairs, portable toilet, bins, gas bottles and mesh storage container.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a) an application for planning permission is deemed to have been made under s177(5) of the Act.

Summary of Decision: The appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

The Enforcement Notice

1. Where there is a deemed planning application to consider, it is important that the description of the breach is precise because the terms of the application are derived from the breach of planning control alleged in the enforcement notice. The reference within the allegation to the "storage" of a container could suggest a storage use is being attacked. When read as a whole it is clear that the notice is directed at a change of use of land to use as a café/shop. For clarity and greater precision, the word "storage" should be replaced with "siting". In order that the allegation and requirements correspond, the word "shipping" should be inserted before "container". It would also be more accurate to replace the word "including" with "and".
 2. As re-worded, paragraph 3 would read "Without planning permission the unauthorised change of use of land for the siting of a shipping container and associated paraphernalia, for use as a café/shop...". Such corrections can be made without injustice to either party.
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Preliminary Matters

3. The appellant refers to the Charnwood Local Plan 2011 to 2028 Core Strategy adopted in November 2015 as being subject to legal challenge, but I have no cause to believe that, as things stand, policy CS 2 thereof as referenced in the notice has anything other than full force and effect.

Main Issue

4. The main issue is the effect of the development on highway safety.

Reasons

5. The appeal concerns a metal shipping style container positioned on a strip of grass beside the pavement along Weldon Road which forms part of a large industrial park. The container is being used as a café/shop selling hot and cold catering to eat in or takeaway. It has been operating since March 2015. A retrospective application to retain the shipping container for use as a café/shop was refused planning permission in August 2015. No appeal was made against that decision.
6. The container accommodates a counter, small kitchen area with appliances and some seating for customers. Outside, there are bins and a metal storage cage behind the unit housing gas bottles. A portable toilet is positioned next to the unit. Signage on the side of the container and beside the road directs vehicles to parking spaces. At my site visit the appellant showed me 2 spaces off the road just past the unit. Another 3 spaces have been offered within the forecourt of a business located a short distance away at the top of the cul-de-sac.
7. Not far along the same grass verge there is a much smaller mobile catering unit which has the appearance of a hut with serving hatch. Whilst currently vacant, it has been in situ for over 10 years and the Council acknowledges that its use is now immune from enforcement action. In refusing the retrospective application, the Council referred to the cumulative impact of both catering units on highway safety. Whilst not explicitly referenced in the reasons for issuing the notice, the Council does refer to residual cumulative impacts in the context of paragraph 32 of the National Planning Policy Framework. Bullet point 3 thereof provides that development should only be refused on transport grounds where the residual cumulative impacts of development are severe. The Council has not drawn my attention to any specific policy directed at highway safety, only Core Strategy policy CS 2, a generic policy promoting high quality design.
8. The appellant suggests that the use of the other catering hut has been abandoned. That strikes me as unlikely when a letter from the owner submitted during this appeal states that its closure is temporary. Trading only ceased in March 2015 and the case law¹ cited by the appellant indicates that a site must be unused for a considerable time before it might be considered abandoned. There has been no other intervening use and the cabin does not appear to be in such a poor state as to render its re-use improbable. Where there exists a use right, it may continue even though the land is not actually being put to that use.
9. Failure by the Council to take enforcement action against the other snack bar use does not in any way set a precedent for further development. Nor does it confirm that the Council accepts the highways implications of a food outlet in

¹ Hartley v SSE [1970] 2 WLR 1; Ratcliffe v SSE [1975] & M&M (Land) Ltd v SSCLG [2007] All ER(D) 55

this location. Indeed, the reason given by the Council for not enforcing against the use was that the unit had remained undetected.

10. Much of the custom will invariably be employees and visitors of the many businesses in the vicinity who will be able to walk easily to the catering unit without the need for a car. This is borne out by the companies who have written to offer their support for the appellant and who clearly value the service provided and its convenience. No doubt there will also be customers who do not access the catering unit on foot. Those arriving by car or small van can use the parking spaces close to the unit, if available.
11. The offer of 3 parking spaces at the nearby business premises could be revoked at any time. So, whilst that extra provision could help reduce the risk of customers parking illegally, it is not a persuasive factor in favour of the development. In any event, the availability of parking spaces will not address the issue of customers arriving in larger vehicles. Nor will it stop customers opting for the convenience of parking in front of the unit despite restrictions being in place. Ultimately though, it is unclear why the Council's concerns cannot be addressed by enforcement of the traffic order.
12. Double yellow lines extend along both sides of Weldon Road together with adjoining highway. Although the unit is stationed opposite a junction, it is towards the end of a cul-de-sac where there will be limited passing traffic. No evidence has been produced by the Council to indicate a risk to well-being arising from illegal parking near to the catering unit. In this regard, the local highway authority has confirmed that no accidents along Weldon Road have been recorded from the Police over a 5 year period ending 31 December 2015. Throughout most of this period the other snack bar would have been trading and attracting similar custom albeit with no eat-in facility which I acknowledge may prolong periods of stay.
13. The Council recounts how on two occasions within a relatively short space of time officers observed motorists parked on the double yellow lines whilst using the café. It also refers to how on three separate occasions a Council Officer saw customers' park outside the unit including articulated lorries, during a period of monitoring in connection with the retrospective application. Whilst acknowledging that evidence, there appears to be a wider issue of abuse of the traffic order and it is by no means clear from the Council's evidence that customers to the café are the primary or even a significant source.
14. It is suggested by the appellant and supporters that illegal parking by HGV's is 'just in time delivery' vehicles to nearby premises. It is plausible that this accounts for a significant proportion. Indeed, when observing the traffic before my site visit I witnessed two HGV's parked for spells near to the unit without the drivers visiting the café.
15. From the evidence before me, I am not satisfied that the presence of this business makes the parking position materially worse. Moreover, the Council has presented no evidence that active enforcement has happened of the traffic order which can quite legitimately be applied. I acknowledge the Council's concerns over parking, but clearly with an order in place, the mechanism is there to enforce the restrictions.
16. There is an absence of any evidence that this development either individually or cumulatively, taking into account also that the nearby snack bar could re-open,

causes significant concerns over pedestrian, cycle or motorist safety. In the particular circumstances of this case I conclude that the residual cumulative impacts of development are not severe. Consequently, I find no conflict with either policy CS 2 or paragraph 32 of the Framework.

Conclusion on ground (a) and the deemed planning application

17. For the reasons given above, and having had regard to all other matters raised including third party objections, I conclude that the appeal on ground (a) and the application for deemed planning permission should succeed.

Conditions

18. The Council suggested only one condition in this eventuality which I have considered in accordance with Paragraph 206 of the Framework and the national Planning Practice Guidance.
19. It is necessary and reasonable to restrict the use to hot and cold food and I have imposed such a condition. The Council does not consider it necessary to control the hours of operation due to the location within an industrial estate away from residential properties. Whilst the appellant has offered a restriction on hours of operation, a condition should not be imposed unless it is necessary. Taking account of the Council's view and there being no identified harm from opening times, I agree that a condition in this regard is unnecessary.
20. The parties disagree on whether a condition for the provision of parking spaces could be enforced. The 3 spaces on offer are outside the appellant's control and it would be unreasonable to require the use to cease if the spaces were removed. The spaces would be a bonus, but as I regard the use to be acceptable in any event, no parking condition is imposed.

Formal Decision

21. It is directed that the enforcement notice be corrected by deleting the wording in paragraph 3 of the notice and substituting it with the words:
- "Without planning permission the unauthorised change of use of land for the siting of a shipping container and associated paraphernalia, for use as a café/shop ("the unauthorised development")."
22. Subject to this correction, the appeal is allowed and the enforcement notice is quashed. Planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the change of use of land for the siting of a shipping container and associated paraphernalia, for use as a café/shop on land at Weldon Road, Loughborough, Leicestershire referred to in the notice, subject to the following condition:-
- 1) The land shall be used only for cold food (Class A1) and hot food (Class A3) and for no other purpose including any other purpose in Classes A1 and A3 of the Schedule to the Town and Country Planning (Use Classes) Order 2015, or in any provision equivalent to those Classes in any statutory instrument revoking and re-enacting that Order with or without modification.

KR Seward
INSPECTOR