
Appeal Decision

Site visit made on 24 October 2016

by Sukie Tamplin DipTP Pg Dip Arch Cons IHBC MRTPI

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

Decision date: 6 December 2016

Appeal Ref: APP/A1720/C/16/3156206

**Unit C Lake Works, Cranleigh Road, Porchester, Fareham, Hampshire
PO16 9DR**

- 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 Paul Donald, (Victory Travel Limited) against an enforcement notice issued by Fareham Borough Council.
- The notice was issued on 21 July 2016.
- The breach of planning control as alleged in the notice is without planning permission, the unauthorised change of use of the site to a mixed use as a coach depot and vehicle repairs and graphic design and digital printing business.
- The requirements of the notice are:
 - i) Cease the use of the site as a coach depot;
 - ii) Cease the use of the site for vehicle repairs.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (c) of the Town and Country Planning Act 1990 as amended.

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.

Application for costs.

1. An application for costs was made by Fareham Borough Council against Mr Paul Donald (Victory Travel Limited). This application is the subject of a separate decision.

Background

2. The appeal site, Lake Works, is located to the south-west of Porchester close to the waters edge. In the general vicinity is a cluster of business uses and marine related activities. To the north and west is open land including a recreation ground. To the east is housing. The site is accessed by a 'no through road' and this road is narrow in places and has several bends so that there is limited forward visibility.
 3. The appeal site has the benefit of a planning permission for B2 use granted in 1954 and it appears probable that it has remained in commercial use, albeit with changes to the operations carried out, since the mid 1950's.
 4. The Council has chosen to under enforce and there are no specific steps in the Notice in respect of the operations carried out by a digital printing firm located within the main building.
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The appeal on ground (c)

5. Ground (c) arises where an appellant seeks to argue that the matters alleged by the enforcement notice do not constitute a breach of planning control. It is one of what are termed the "legal grounds" of appeal against an enforcement notice and the onus of proof lies with the appellant, the relevant test of the evidence being the balance of probability.
6. The appellant's case is that the appeal site has been in use for industrial purposes since at least 1961 and the use by Victory Travel for a coach workshop, coach storage and office use is simply a continuation of the use of the site and buildings in accordance with the original permission. This they say is because the use falls within Class B2 of The Town and Country Planning (Use Classes) Order 1987 as amended (the UCO). The UCO says that 'Class B2' means general industrial uses described as a "use for the carrying on of an industrial process other than one falling within Class B1¹". In support of this the appellant says that the Council accepted in the case of another coach operator in the Borough that that use fell within use as a "general industrial use".
7. No evidence has been submitted to support this assertion, however even if I were to accept this, the circumstances at Victory Travel are different. As I saw, and as is made explicit in the allegation, the site is not solely used as a coach depot but also has a repair workshop, and that activity includes repairing vehicles for other operators. Moreover, the appeal premises accommodates, within the main building, a B1 use known as Fizzyprint. This printing business occupies the ground floor of part of the principal building and its operations and activities, other than sharing the building and part of the forecourt for staff parking, are functionally independent and separate from Victory Travel. Thus, as a matter of fact, the appeal site is in mixed use so that it does not fall within Class B2 of the UCO. Accordingly there has been a material change of use from B2 to the present mixed use.
8. Section 55(1) of the Act² says that development includes the making of any material change of use of any buildings or other land. Section 57(1) says that planning permission is required for any development of land other than in respect of specified exemptions none of which are claimed here.
9. Section 171A (a) says development without planning permission is a breach of planning control and no such planning permission has been granted. For this reason the appeal on ground (c) does not succeed.

The appeal on ground (a)

Main Issues

10. The main issues in this appeal are the effect of the operation of the coach depot on:

highway safety; and

the living conditions of residential occupiers hereabouts.

¹ B1 being a use which can be carried out in any residential area without detriment to the amenity of that area by reasons of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit.

² Town and Country Planning Act 1990 as amended

Highway safety

11. As the Council says the geometry of Cranleigh Road results in larger vehicles, including the coaches travelling to and from the appeal site, swinging over to the wrong side of the road to negotiate the tighter bends. Thus, as is reported in the representations by third parties, there are at times, when the use by large vehicles prevents or restricts the free flow of traffic along this highway.
12. Cranleigh Road also provides the sole access to the recreation ground and there is no reason to doubt the veracity of comments about the amount of on-street parking when football matches take place and the significant number of children who use the road as pedestrians and cyclists. Added to this is its use as the access to the marina just to the east of the site and the cluster of commercial premises and businesses within it. Whilst I accept that my visit was just a snap-shot in time, I saw that the industrial units at the marina generate traffic, primarily light vans and some HGV's, although this seems intermittent and sporadic. Hence Cranleigh Road is frequented by a variety of vehicles including commercial traffic, some of which will be Heavy Goods Vehicles, and is also used by some vulnerable pedestrians and cyclists.
13. I therefore I find that the additional traffic, by reason of the number and size of the vehicles generated by the coach operation, is likely to exacerbate the already difficult road conditions on the sole access to and from the site.

Living conditions

14. Lake Works is well separated from residential property and thus any potential disturbance to residents arises primarily from vehicles travelling along Cranleigh Road and does not result from the operation of the vehicle repair facility. Although the coaches and buses must drive past numerous residential properties, these are for the most part set back from the carriageway edge behind short front gardens. In terms of the school transport contract the disturbance caused is in any event within normal waking hours.
15. However Victory Travel say that, on occasion, coaches depart from the depot at 5 am and their web site says that in addition to the core school transport business they offer hire for wedding and party coaches and airport and ferry transfers. Thus, coaches and buses may well travel along Cranleigh Road very late at night or early in the morning. Consequently, I have no reason to doubt that residents find early and late journeys unacceptable. This is particularly because the vehicles would have to change gear and accelerate from low speeds because of the sharp bends and thus there is louder engine noise. I therefore find that the traffic generated by the business causes some harm to living conditions.

The Planning Balance.

16. I have found that harm, both to road safety and to living conditions, has arisen because of the unauthorised and unregulated operation of Victory Travel Ltd at Lake Works. However this effect has to be considered in the context of the planning history of the appeal site. The planning permission granted in the 1950's was for industrial use of the site, now known as a B2 use. Thus the lawful use is for general industrial processes and activities which would not normally be appropriate in or adjacent to a residential area. The permission

has no restrictions on the type of activity, the hours of operation or the number or size of vehicles.

17. The appellant's evidence is that Lake Works formerly employed up to 50 workers on this and their sister site and manufactured boats up to about 15m in length. Thus the access route, now used by Victory Travel, has been used in the past by up to 50 employees, and also by articulated lorries and hydraulic cranes in association with its lawful use. In the light of the provisions of Section 57(4) of the Act, if I were to uphold the Notice this previous use could resume without the need for planning permission whether or not the effect on the highway causes harm to road safety or living conditions. Any such resumption would not be subject to any conditions limiting hours of operation or numbers of vehicles.
18. There is no direct evidence of the amount of traffic generated by the previous B2 occupiers of the site. The only available survey, provided in association with a proposed housing development in the vicinity, was undertaken in July 2014. At that time Lake Works was occupied by the Disabled Sailing Association prior to the use of the site by the appellant. Although this survey was primarily a speed survey it showed that between 7am and 9am there was a total of 89 vehicles travelling eastwards. During the same period there were 3 cyclists. At that time there was no bus or coach traffic.
19. Victory Travel's primary business is school transport and most vehicles leave the premises daily about 8 am-9am, although 2 vehicles leave at 6.45am. Thus it is likely that the coaches do result in a substantial increase in this type of traffic in the morning peak, but this is in the context of light traffic flows of other traffic along this no through road. The appellant says that coaches do not return to Lake Works after the morning school journey, although this is disputed by the Council. The information provided in the planning contravention notice says vehicles are normally back in to the depot by 7pm. However, it is probable, given the primary core business in connection with school transport and the other site available to Victory Travel where coach parking can take place, that for much of the day there is little coach or bus traffic until the vehicles return following the afternoon school run.
20. The appellant says that Victory Travel would be willing to restrict their hours of operation from 6.30am to 10pm on a daily basis. In turn the Council consider a condition should restrict vehicles leaving or entering the site other than between the hours of 7.30am and 7pm on any day. The yard at Fratton used by Victory Travel may offer flexibility for later and earlier journeys so that it would not be unreasonable to restrict the hours so that buses do not leave Lake Works before 7am or arrive back after 7pm.
21. Therefore, in the light of the permission for the unrestricted use of the appeal site as a general industrial site which could resume at any time without any need for planning permission, I conclude that, if regulated by planning conditions, the effect of the operations of the coach company and the associated vehicle repair workshop would not unreasonably increase the adverse impact on road safety or living conditions. In coming to this conclusion I have taken into account that currently up to 13 vehicles are based at Lake Works and there is also traffic associated with the repair workshop that also services vehicles from other fleets (said to be about 4 at any time). Hence if the numbers of vehicles were to be restricted and the hours of operation

limited the effect on highway safety would not be greater than that likely to be associated with the previous authorised use of the site. Indeed, given the absence of conditions on the authorised use, a future occupier would be able to operate lawfully yet create more traffic at all hours to the detriment of local residents and highway safety.

22. Consequently, the use subject of the Notice, if limited by conditions would not be in conflict with the aims of Policy CS5 of the Fareham Borough Core Strategy (FBCS), which seeks to ensure, amongst other matters, that development does not adversely affect the safety and operation of the local road network. Nor would there be conflict with the aims of Policy DSP2 of the Fareham Borough Local Plan Part 2 because appropriate conditions would mitigate the adverse impact on the occupiers of neighbouring residential properties.
23. In the light of these considerations, the planning balance weighs in favour of permission.

Overall conclusion on Ground (a), and the deemed application.

24. I conclude that the appeal should succeed on ground (a) and for similar reasons planning permission should be granted for the deemed application subject to the conditions set out in the formal decision.
25. The Council has suggested a condition limiting the movement of commercial vehicles from the appeal site. This condition is necessary because of the disturbance to neighbouring occupiers; however I have amended it to better reflect the normal working of the coaches in connection with the school transport contracts. I also agree for the same reasons that the number of vehicles operating from the site should be similarly be restricted. In the interests of clarity it is also necessary to specify the approved location plan.

Formal Decision

26. The Appeal is allowed, the enforcement notice is quashed and planning permission is granted for 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 the site to a mixed use as a coach depot and vehicle repairs and graphic design and digital printing business at Unit C Lake Works, Cranleigh Road, Porchester, Fareham, Hampshire PO16 9DR as referred to in the notice, subject to the following conditions.
- 1) The development hereby permitted shall be retained only in accordance with the following approved plans: Land edged in red on the location plan attached to the enforcement notice.
 - 2) No commercial vehicles (including any coaches or minibuses) shall leave or enter the site prior to 0700 hrs on any day or leave or enter the site later than 1900 hours on any day.
 - 3) No more than 13 commercial vehicles used for passenger transport (including coaches and minibuses) shall be stored outside of the buildings on the site at any time.

Sukie Tamplin

INSPECTOR