
Appeal Decision

Site visit made on 18 January 2017

by Thomas Shields MA DipURP MRTPI

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

Decision date: 23 January 2017

Appeal Ref: APP/H0738/C/16/3155329

Car Park to rear of 51 Mandale Road, Thornaby, Stockton-on-Tees, Cleveland TS17 6AE

- 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 Act).
 - The appeal is made by Mr Steve Mellor against an enforcement notice issued by Stockton-on-Tees Borough Council.
 - The enforcement notice was issued on 24 June 2016.
 - The breach of planning control as alleged in the notice is a change of use of part of a car park for the stationing of a mobile catering unit and associated seating without planning permission.
 - The requirements of the notice are:
 - a) Cease using the land for the stationing of a mobile catering unit and associated seating.
 - b) Remove the mobile catering unit, associated seating and any other associated equipment relating to the unauthorised use from the land.
 - c) Restore the land back to the condition it was in prior to the breach taking place.
 - The period for compliance with the requirements is 2 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (c) of the Town and Country Planning Act 1990 as amended. Since the prescribed fee has not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act does not fall to be considered.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld.

Appeal site

2. The appeal site occupies an area of an existing car park to the rear of premises on Mandale Road.

The appeal on ground (c)

3. The ground of appeal is that the alleged matters, if they occurred, did not constitute a breach of planning control. The burden of proof in legal grounds of appeal, including ground (c), rests with the appellant, and the test of the evidence is the balance of probability.
 4. The appellant does not deny that at the date the enforcement notice was issued the mobile catering unit and associated seating occupied the small section of land shown by the red line on the notice plan within the existing car park.
 5. His argument is that prior to his occupation in 2015 the same area of land was occupied by three large metal storage containers since 2013, and before that
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- used for storage of cardboard without containers. A letter from SIS Plastic Recyclers confirms the use from 2013. Thus the appellant's position is that his use of the land is not materially different from the previous use.
6. The question to address in this appeal therefore is whether the use of the land for stationing the catering unit and associated seating amounts to a material change of use of the land requiring planning permission.
 7. There is no evidence before me that planning permission was granted for the siting of the three storage containers as a separate planning unit from the car park. That use may have been an incidental or ancillary use to the primary use as a car park. The Council states that they were not permanent structures and could have been removed at any time.
 8. I am not convinced on the little evidence before me that the siting of the containers was a material change of use of the car park. However, even on the basis that it was a separate and distinct planning use representing a material change of use from the car park, it ceased when the land was occupied by the appellant's business.
 9. Given the activities of preparing and retailing food for consumption by visiting customers, at or away from the catering trailer, I consider that land use to be wholly different in nature and character to a car park, or alternatively to the siting of storage containers. Therefore, in either of those scenarios, and having regard to long established case law¹, I conclude as a matter of fact and degree that the appellant's use of the land was a material change of use of the land which requires planning permission.
 10. I note that the appellant contends that the use does not produce any adverse traffic or parking impacts. However, those considerations do not affect my conclusion that there has been a material change of use as I have described.
 11. Since planning permission has not been granted for the material change of use it constitutes a breach of planning control.
 12. The appeal on ground (c) therefore fails.

Thomas Shields

INSPECTOR

¹ *Burdle & Williams v SSE* [1972] 1 WLR 1207