
Appeal Decision

Site visit made on 15 February 2017

by Grahame Kean B.A. (Hons), PgCert CIPFA, Solicitor HCA

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

Decision date: 3 March 2017

Appeal Ref: APP/M3455/C/16/3154210

Land at Guardian Care Centre, Selwyn House Nursing Home, Longton Road, Trentham, Stoke-on-Trent, ST4 8FF

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mr Steve Forrester of Nightingale Group against an enforcement notice issued by Stoke-on-Trent City Council.
 - The enforcement notice was issued on 4 July 2016.
 - The breach of planning control as alleged in the notice is without planning permission, the change of use of land for purposes associated with the adjoining residential care home (use class C2).
 - The requirements of the notice are:
 1. Cease the use of the land for the purpose of vehicle parking and storage of equipment, materials and waste associated with the adjoining use of a residential care home.
 2. Remove all hardcore material from the land and restore the land to its condition prior to development taking place.
 - The period for compliance with the requirements is 3 months from the date when this notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(b) (c) and (f) of the Town and Country Planning Act 1990 as amended.
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Summary of Decision

1. The appeal is dismissed and the enforcement notice is upheld with a correction.

The enforcement notice

2. The allegation of the breach of planning control does not intend to refer to the existing use of land but, whilst that is not essential, for the sake of clarity the word "for" should be replaced by "to". I shall make this correction using powers available under s176(1)(a) of the Act.

The appeal on ground (b) – whether the breach of planning control has occurred as matter of fact

3. Under this ground the appellant must show on the balance of probabilities that the alleged change of use specified in the notice has not occurred.
 4. The appeal site is an approximately square-shaped parcel of land adjacent to the car park belonging to the former Guardian Care Centre, now known as the Selwyn House Nursing Home. The home provides residential care accommodation and its car park is within the north-east boundary of the premises.
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5. When I visited, two unoccupied vehicles were parked on the appeal site, a people carrier displaying the livery of Selwyn House, and a van bearing a logo of an electrical services contractor. Both were driven off shortly after the visit commenced. The land has a compacted surface with some loose gravel on top and there is a dropped kerb giving access to it from the car park.
6. Adjacent to the south-west boundary of the appeal site there is a timber-fenced compound with sheds containing waste, construction materials such as timber, and sundry items such as salt for road gritting. The compound is outside the appeal site, however a small amount of sand within the appeal site is stored against the fence outside the compound. Photographs taken in 2016, including in June 2016 prior to the issue of the notice, show that a wider area within the appeal site has been used for parking, and to store items such as disused chairs and tables, steel or plastic frames, loose waste material and the like.
7. From what I have seen and read I am satisfied that the appeal site is in use for purposes associated with the adjoining residential care home. The appellant's denial that the land is being used for such purposes is untenable. Accordingly this ground of appeal fails.

The appeal on ground (c) that there has not been a breach of planning control

8. The appellant has not referred to any planning permission that deals with the use or development of the appeal site although he asserts that it forms part of the adjoining site which has had planning consent for use as a residential care home since 1994. According to him the appeal site has always been used in connection with the care home for ancillary purposes such as "housing a shed or parking a skip or accessing maintenance works to the nearby pylon". He also claims that these ancillary uses have been "permitted development" within the 1994 planning permission and the land is not excluded from ancillary use.
9. Permitted development and ancillary use are two distinct concepts. The first relates to development that is granted planning permission by a development order, currently the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO).
10. Secondly, a use may be ancillary to a primary use where carried on within the same parcel of land or "planning unit". However a developer cannot establish the lawfulness of a new use on additional land, simply by claiming that it was connected with the primary use of adjacent land. The additional land must benefit from a relevant permission, or its use must have continued for such a period that it has become immune from enforcement action.
11. I have considered whether the claim that the land has always been used in connection with the care home, and the reference to the 1994 permission, amount to a hidden ground of appeal on ground (d), namely that when the enforcement notice was issued, it was too late to take enforcement action. From the photographs supplied it is clear that at least for some period within the last ten years prior to the issue of the notice, the appeal site had been open grass land, fenced off from the grounds of the nursing home. No other information indicates that the appeal site was connected to the care home and especially not for the ten year period of continuous use required to gain immunity from enforcement action, under s171B(3) of the Act. I am therefore satisfied that an appeal on ground (d) would not succeed.

12. Turning back to the appellant's case on ground (c), the appeal site did have the benefit of a temporary planning permission granted by a previous development order¹ during operations to erect a twenty bedroom care facility extension, granted permission in 2010. This and the current GPDO allow the provision on land of buildings, moveable structures, works, plant or machinery required in connection with and for the duration of operations being carried out on adjoining land. When those operations have been completed, the land on which the temporary development has been carried out must, as soon as reasonably practicable, be reinstated to its former condition.²
13. In 2013 the Council found that the use of the appeal site was still in accordance with the permission granted under the development order. This is consistent with the appellant's references to a "further extension" granted in 2013 when the appeal site was allowed to be used for contractors' parking and "resulted in it being fenced off with lighting and further hardcore added". But the use of the appeal site has continued beyond the period necessary for the construction of the care home extension, so the permission no longer applies.
14. None of the other planning permissions that I have seen relating to the care home makes any reference to consent for the appeal site to be used for car parking or storage. I conclude that there has been a material change in the character of the use of the land and the appellant has failed to show on the balance of probabilities that the alleged change of use of the appeal site is not a breach of planning control. Therefore the appeal on ground (c) fails.

The appeal on ground (f)

15. The issue on this ground is whether the steps required by the notice exceed what is necessary to remedy the breach of planning control or to remedy any injury to amenity caused by the development. By requiring the land to be restored to its original condition the notice indicates that its aim is to remedy the breach of planning control in accordance with s173(4)(a) of the Act.
16. It is suggested that to remove all hardcore from the site would mean removing hardcore that has existed "since the development of the site from 1994" and it would be impossible just to remove what was added in 2013 without removing pre-existing hardcore. So, it is said, it would be more reasonable to tidy up the perimeter fencing, and ensure that no materials are left outside a skip when it is sited on the appeal site.
17. The aerial photographs show that a change of use of the appeal site from open grass land began no earlier than about 2012. I am not persuaded that there was any pre-existing hardstanding or hardcore before that date so it matters not that material from successive deposits has become commingled with the original deposit. As such, the requirement to remove all hardcore is not excessive nor are the requirements to cease using the land for parking and storage associated with the nursing home. Consequently this ground of appeal also fails.

Overall Conclusion

18. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction.

¹ Town and Country Planning (General Permitted Development) Order 1995, Schedule 2, Part 4, Class A

² Schedule 2, Part 4, Class A, Condition A.2 (b)

Formal decision

19. It is directed that the allegation of the breach of planning control in the enforcement notice be corrected by deleting “for” and replacing it with “to”.
20. Subject to this correction the appeal is dismissed and the enforcement notice is upheld.

Grahame Kean

INSPECTOR