

Appeal Decision

Inquiry held on 10 and 26 January 2017

Site visit made on 26 January 2017

by Mrs H M Higenbottam BA (Hons) MRTPI

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

Decision date: 04 April 2017

Appeal A: APP/B1550/C/16/3148833

Appeal B: APP/B1550/C/16/3148834

Appeal C: APP/B1550/C/16/3148835

24 Golden Cross Road, Rochford SS4 3DG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- Appeal A is made by Alpine Taxis Ltd, Appeal B is made by Mr Peter Richmond and Appeal C is made by Mrs Carol Richmond against an enforcement notice issued by Rochford District Council.
- The enforcement notice was issued on 23 March 2016.
- The breach of planning control as alleged in the notice is 'Without planning permission, the material change of use from a mixed use for residential and taxi business, with up to 4 taxi vehicles parked on or close by to the site, to a mixed use of residential and taxi business with 5 to 7 taxi vehicles parked on or close by to the site.'
- The requirements of the notice are:
 1. Cease the parking of more than four licensed or any other vehicle associated with the use of the site as a taxi business, on or close by to the site.
- The period for compliance with the requirements is two weeks.
- 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.

Summary of Decisions: The appeals are allowed following correction and variation of the enforcement notice in the terms set out below in the Formal Decisions.

Application for costs

1. At the Inquiry an application for costs was made by Alpine Taxis Ltd, Mr Peter Richmond and Mrs Carol Richmond against Rochford District Council. This application is the subject of a separate Decision.

Preliminary matter

2. All oral evidence to the Inquiry was given under oath or affirmation.

The notice

3. There was much debate at the Inquiry over whether the term taxi vehicles included private hire vehicles and hackney carriages. The allegation in the current enforcement notice does not follow the description of vehicles set out in a previous appeal (reference APP/B1550/C/07/2057865) (2008 appeal) in relation to the use of the site. The Inspector in the 2008 appeal found a wider group of vehicles to be lawful and corrected the allegation. The parties in the
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current appeal accepted that the term licenced vehicles would include hackney carriages, private hire vehicles and VOSPA licensed vehicles. Moreover, it was accepted by the appellants that a variation of the term 'taxi vehicle' to 'licensed vehicle' in the allegation would not cause injustice or be prejudicial to any party. I shall therefore correct the notice to refer to licensed vehicles in the allegation.

4. The requirement refers to 'other vehicles' and 'on land close by the site'. The reference to any other vehicle is vague and imprecise and control of vehicles beyond the planning unit is unreasonable. I will therefore vary the requirement to address these points.

Appeal on ground (b)

5. The appeal on ground (b) is directed to the consideration of whether the matters alleged in the notice have occurred as a matter of fact. The burden of proof is on the appellant and the relevant test is the '*balance of probabilities*'.
6. The Council accepted that the evidence collected over 26 visits prior to the issuing of the enforcement notice, and further visits after, did not differentiate between licensed and unlicensed vehicles. However, in oral evidence it was demonstrated that the photographs on 6 and 30 January 2016 showed 5 licensed vehicles and on 10 December 2015 there were 8 licensed vehicles parked on or close by the appeal site. Although I note that there is no substantiated evidence to demonstrate when the photographs were taken or how long the cars remained in situ.
7. The appellants have not demonstrated that there have never been 5, 6 or 7 licensed vehicles on or around the appeal site. Mr Richmond accepted in July and August 2015 there were many taxi vehicles on or around the appeal site as other taxi drivers attended meetings.
8. In my view, on the balance of probabilities, it is likely that on occasion there have been 5, 6 or 7 licensed vehicles parked on or close by the site. As such, the appeal on ground (b) fails.

Appeal on ground (c)

9. This ground is that what is alleged does not amount to a breach of planning control.
10. Taking the allegation and the reasons for issuing the notice together, the notice alleges a material change of use, through intensification of the numbers of taxi vehicles parked on or close by, the site. The intensification alleged is set out in numbers of taxi vehicles from 'up to 4' to between '5 to 7 taxi vehicles'.

Background

11. In 2007 an enforcement notice was issued alleging:
 - a) The change of use of the land from residential to a mixed use including residential and the use of the site for the operation of a taxi office and business, including parking of taxis, passenger service and private hire vehicles and any other similar vehicles not used solely in conjunction with the domestic use of 24 Golden Cross Road and:

- b) The erection of an aerial mast in association with the use of the site for the operation of a taxi office and business.
12. An appeal was lodged (referred to as the 2008 appeal in this decision) on ground (d) and a fee was paid within the specified period which resulted in a deemed planning application to be considered.
13. In ground (d) of the 2008 appeal the Inspector found that the administration of the taxi business and the ancillary parking of up to four licensed vehicles on or close to the site were immune from enforcement action. This was because she found that it had continued for more than ten years prior to the issue of the enforcement notice. Allegation a) and b) of the enforcement notice were corrected¹ and the ground (d) appeal in relation to allegation a) succeeded. In relation to allegation b), concerning the erection of an aerial mast, the Inspector found that it was unauthorised and was not immune from enforcement action. The Inspector went on to grant planning permission for the aerial mast.
14. The statement of common ground (Doc 3) submitted at the Inquiry states that the lawful use of the appeal site is for residential use and the administration of the taxi business and ancillary parking for up to four licensed vehicles on or close to the house. While it is clear that the Inspector in the 2008 appeal considered that the parking of up to four licensed vehicles on or close to the site were immune from enforcement action (paragraph 13 of the decision letter), the corrected allegation referred to other vehicles associated with the use and the scale or numbers relating to those 'other vehicles' associated with that lawful use were referenced in the decision.
15. I raised at the Inquiry with the parties that, in my view, the lawful use of No 24 is as a mixed use including residential use and the use of the site for the operation of a taxi business, including the parking of taxis, passenger service and private hire vehicles and other similar vehicles not used solely in conjunction with the domestic use of No 24. This follows, and is in line with, the corrected first allegation of the 2008 appeal decision. The reference to four licensed vehicles on or close to the site is within the reasoning of the Inspectors decision but is not part of the corrected allegation.

Planning unit

16. The materiality of any alleged change of use has to be assessed in terms of the whole site concerned. The planning unit is a concept which has evolved as a means of determining the most appropriate physical area against which to assess the materiality of the change of use. In this case the planning unit was agreed by the parties as comprising the totality of the land and buildings outlined in bold and hatched on the plan attached to the enforcement notice. This area comprises the dwelling No 24, its front driveway/garden, the rear garden and an ancillary building. I concur that this is the extent of the planning unit. The public highway is not within the planning unit.

¹ Allegations a) and b) were corrected to read

- a) the change of use of the land from residential to a mixed use including residential and the use of the site for the operation of a taxi business, including the parking of taxis, passenger service and private hire vehicles and any other similar vehicles not used solely in conjunction with the domestic use of 24 Golden Cross Road; and
- b) The erection of an aerial mast in association with the use of the site for the operation of a taxi business.

Intensification of use as a material change of use

17. Intensification of a use does not amount to a material change unless and until the fundamental character of the use changes. It applies when the only way to distinguish between the former and present uses is in terms of scale. For a use to amount to a material change of use through intensification it must be of such a degree as to amount to a material change in the character of that use. Therefore, an increase in the numbers of taxi vehicles need not in itself constitute development. It will only do so if the increase is of a scale sufficient to constitute a material change in the character of the use. In assessing whether a change is material it has been held² that it is proper to assess materiality in planning terms, having regard to the possible effect of the change on local amenity.
18. Since the 2008 appeal, the numbers of licensed vehicles directly owned by Alpine Taxis Ltd or members of the Richmond family is stated to have been significantly reduced from 31 vehicles to 19 vehicles. There is no substantiated evidence to demonstrate that there has been an increase in other licenced vehicles that may not be owned by Alpine Taxis or the Richmond family, attending the site or nearby other than in relation to three particular meetings held in July and August 2015. The evidence of the appellants seems to me to imply that the licensed vehicles have therefore reduced in numbers over the period since the last appeal decision.
19. In addition Mr Richmond gave oral evidence that there were 24 sub-contractors associated with the taxi business in 2008 and that this had reduced to 16 sub-contractors in 2016.
20. The daily operations carried out at No 24 were explored at the Inquiry. Mr Richmond's oral evidence was that a lady works part time (p/t) between 10am and 2pm each day at the appeal site and deals with the administration of the company (p/t employee). This has not changed since the 2008 appeal, although the room used by the p/t employee in the house has changed. She deals with the accounts of the business reconciling invoices and drivers do come to No 24 to be paid/drop off paperwork. Again this is stated to be as it was in 2008. Drivers attend No 24 weekly or monthly between 10.30am and 1.30pm. The p/t employee also attends the Hockley dispatch office and drivers will often attend that office to drop off relevant information/make payments/get paid. Sub-contractors do the same as the employed drivers.
21. The detached brick built building in the rear garden of No 24, which was used for about three months as a despatch office before the 2008 appeal, is used for training drivers and testing of equipment. It is also capable of replacing the Hockley office if something goes wrong. It therefore has the technology within it to allow all the functions that take place at the Hockley office to be carried out from it. Mr Richmond stated that this has happened about twice since the 2008 appeal. The building is also used as a venue to train drivers how to use equipment and for the testing of equipment. Training takes place, on average, about once a month.
22. Mr Richmond explained that in July and August 2015 there had been three different delegations of drivers attending the appeal site for meetings. The drivers attending these meetings were not, at the time of the meetings,

² Hertfordshire County Council v SSCLG and Metal and Waste Recycling Ltd [2012] EWCA Civ 1473.

employed or sub-contracted to Alpine Taxis Ltd. The evidence both in writing and given orally at the Inquiry by local residents indicates that a large number of licensed vehicles were at or nearby the appeal site on 13 August 2015. I accept the explanation of Mr Richmond that these meetings were unusual and not part of the running of Alpine Taxis Ltd but a response to particular issues in the taxi community of the area.

23. The evidence provided by the Council and interested parties did not differentiate between licensed vehicles and unlicensed vehicles. The unlicensed vehicles looked to the Council Officer and local residents, who photographed them or recorded them, as though they were taxis/private hire vehicles because they often retained the livery of Alpine Taxis Ltd such as the telephone number on the body work of the vehicle. However, it was demonstrated in evidence that a number of photographs were of vehicles that had been decommissioned and their license plates had either been transferred to another vehicle or were no longer in use. As such, as a matter of fact, they were neither taxi vehicles nor licensed vehicles. These unlicensed vehicles, to my mind, fall within the 'other similar vehicles not used solely in conjunction with the domestic use of No 24' term set out in the corrected allegation in the 2008 appeal decision.
24. In the normal course of running a taxi business there will be decommissioning of licensed vehicles and their disposal. Often, but not always, the license plate³ will be transferred to a newer vehicle. It appears that the number of decommissioned vehicles has in recent times increased to a greater number than at other times in the history of the use and these may have been disposed of more slowly than in previous times. I have considered whether or not to widen the allegation to refer to the vehicle types referred but have concluded to do so would result in injustice and prejudice to the appellants who have based their case on taxi vehicles and/or licensed vehicles. I therefore conclude that whether or not there has been an intensification of unlicensed/decommissioned vehicles is not part of the allegation before me.
25. The available space to the front of No 24 limits the numbers of vehicles that can be accommodated within the appeal site. There was no substantiated evidence of a change in how the business was operated or how cars were dropped off or collected or the frequency of visits by drivers or sub-contractors to No 24. Mr Richmond gave oral evidence that the way Alpine Taxis Ltd operated in 2008 was basically as it operated when the enforcement notice the subject of this appeal was issued, albeit with reduced licensed vehicles and sub-contractors in 2016.
26. I consider that the evidence demonstrates that on occasions there were more than four licensed vehicles on or around the appeal site. However, I am not satisfied, on the evidence available, that this was the majority of the time or that the issues with increased traffic or on street parking associated with the business raised by the local residents, were predominantly related to licensed vehicles. Furthermore, there is no substantiated evidence to demonstrate that more than four licensed vehicles in or around the area led to a change to the fundamental character of the use at No 24. Licensed vehicles are one type of vehicle associated with the taxi business. I am not satisfied that an increase of licensed vehicles to 5, 6 or 7 for part of a day on some days in or around the

³ In this case 'license plate' refers to the allocated license number of the Council. It does not refer to the DVLA registration plate of the vehicle.

appeal site has resulted in a material change to the character of the use of No 24.

27. The Council accepted that the evidence collected over 26 visits prior to the issuing of the enforcement notice, and further visits after, did not differentiate between licensed and unlicensed vehicles. The evidence contained in the Council's appendices YD17 did provide photographic evidence that on some days there were more than four licensed vehicles in or around the appeal site. However, although the photographs on 10 December 2015 showed 8 licensed vehicles were on or around the appeal site on that day it has not been demonstrated that the photographs were taken at the same time of day. More than 4 licensed vehicles were also photographed on other days in or about the appeal site such as on 6 and 30 January 2016. There is no substantiated evidence of how long the cars remained in situ.
28. The contention between the parties is that local residents and the Council consider that there has been an increase in vehicle movements on the public highway, or entering and exiting the appeal site, of licensed vehicles which are purported to be associated with the taxi business operation at No 24. There was no substantiated evidence of increased activity within the planning unit identified in this case. I conclude, on the balance of probabilities, that there has been no material increase in the licensed vehicles on or nearby the appeal site since 2008. In reaching my conclusion I have taken into account the decrease in the number of licensed vehicles and sub-contractors associated with Alpine Taxis Ltd since 2008, the lack of substantiated evidence that the comings and goings of drivers and sub-contractors to the appeal site has materially changed and that it has not been demonstrated that the current activities are more frequent than was the case at the time of the 2008 appeal decision.
29. As such, on the balance of probabilities, I find that there has not been a material change of use from a mixed use for residential and taxi business, with up to 4 licensed vehicles parked on or close by to the site, to a mixed use of residential and taxi business with 5 to 7 licensed vehicles parked on or close by to the site. The appeal on ground (c) succeeds.

Conclusion

30. For the reasons given above I conclude that the appeals should succeed on ground (c). Accordingly the enforcement notice will be quashed. In these circumstances the appeal under ground (f) set out in section 174(2) of the 1990 Act as amended does not need to be considered.

Formal Decisions

31. It is directed that the enforcement notice is corrected by the deletion of the words 'taxi vehicles' in paragraph 3 and their substitution with 'licensed vehicles' and varied by deletion of the words 'or any other vehicle' and 'or close by to' in paragraph 5. Subject to these corrections and variations the appeals are allowed and it is directed that the enforcement notice be quashed.

Hilda Higenbottam

Inspector

APPEARANCES

FOR THE APPELLANT:

Mr Dagg	Of Counsel, instructed by Paul Robinson Solicitors
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He called

Mr Peter Richmond	Appellant for Appeal B and Director of Alpine Taxis Ltd
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FOR THE LOCAL PLANNING AUTHORITY:

Mrs R Hurst	Solicitor for Rochford District Council
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She called

Miss Y Dunn MSc	Team Leader, Rochford District Council
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Mr Roy Davis	Local resident
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Mr Brian Hubbard	Local resident
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Mr Peter King	Local resident
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DOCUMENTS SUBMITTED TO THE INQUIRY

- 1 Statement of Common Ground submitted by the appellants
- 2 Rochford District Council licensing details of license plates assigned to Alpine Taxis Ltd and the appellants submitted by the appellants.
- 3 Details of current usage of license plants and of current owner drivers engaged by Alpine Taxis Ltd submitted by the appellants.