
Appeal Decision

Site visits made on 10 and 28 February 2017

by Jean Russell MA MRTPI

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

Decision date: 13 April 2017

Appeal Ref: APP/E2734/C/16/3160107

The land situate and known as Coach House, 5-7 Back Granville Road, Harrogate, North Yorkshire, HG1 1BY

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Kevin O'Boyle o/b Town Taxis Harrogate Ltd against an enforcement notice issued by Harrogate Borough Council.
- The enforcement notice, numbered 034678/310030, was issued on 16 September 2016.
- The breach of planning control as alleged in the notice is: without planning permission the unauthorised material change of use of the land to a use as a taxi office.
- The requirements of the notice are to:
 - 5.1 Cease the use of the land as a taxi office
 - 5.2 Remove all signage located on the external elevations referencing the taxi use
 - 5.3 Remove the external lighting associated with the signage
- The period for compliance with the requirements is one month.
- The appeal is proceeding on the grounds set out in s174(2)(a), (c), (f) and (g) of the 1990 Act. Since an appeal has been made on ground (a) and the prescribed fees have been paid within the specified period, the application for planning permission deemed to have been made under s177(5) of the Act also falls to be considered.

Decision

1. The enforcement notice is varied by deleting 1 month and substituting 3 months as the time for compliance. Subject to this variation, the appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Procedural Matters

2. The appellant requested that the appeal be determined by the hearing procedure, on the basis that there is considerable interest by third parties – and their evidence is open to challenge. The appellant later suggested that the evidence of interested parties should carry no weight if he had no opportunity to question it at a hearing.
 3. The Planning Inspectorate's Procedural Guides advise that it is appropriate to determine enforcement or planning appeals by the written representations procedure if the grounds of appeal and planning issues can be clearly understood from the appeal documents; the issues are not complex; and the *Inspector* does not need to test the evidence by questioning or clarify other matters. The hearing procedure is appropriate if warranted by the level of local interest or the Inspector is likely to need to test or clarify evidence.
 4. After reviewing the written evidence and then making an unaccompanied site visit on 10 February 2017, I determined that it would be inappropriate to determine this appeal by the hearing procedure. Some, but not a large number of local residents had shown an interest in the case. I could understand the grounds of appeal and
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planning issues from the documents, and did not need to test or clarify the evidence. In this situation, holding a hearing would have needlessly served to increase the costs of the appeal to all parties. The appellant asked me to visit another taxi office; I did so on 28 February 2017.

5. On 22 February 2017, the Council notified third parties of the procedure for the appeal. Only one representation was received and it affirmed the concerns of local residents rather than raising new issues; these points add weight to my view that this appeal would not be suitable for a hearing. The appellant had an opportunity to respond to the third party's letter and I have taken account of all submissions. Thus, the appellant is not disadvantaged by use of the written representations procedure, and it is for me to determine the weight that any evidence should carry.
6. An application for costs was made in writing by Mr Kevin O'Boyle o/b Town Taxis Harrogate Ltd against Harrogate Borough Council. This application is the subject of a separate Decision.

The Site and its Surroundings

7. Back Granville Road would be colloquially described as a side street on the edge of Harrogate town centre. On the south side, the road is lined with the rear elevations of and courtyards serving commercial properties at Cheltenham Parade. The north side of Back Granville Road is fronted by former coach houses, behind which lie the raised gardens and rear elevations of dwellinghouses on Granville Road.
8. The courtyards on the south side of Back Granville Road are reserved for private parking, while the street itself is mainly marked by double yellow lines, including by the appeal building. However, there are several on-street parking bays further along the carriageway, where drivers may park for 30 minutes per day between 09.00 and 20.00 hours. There is no limit on the duration or number of occasions when drivers can park in the bays between 20.00 and 09.00.

The Appeal on Ground (c)

9. The appeal on ground (c) is that the matters alleged in the enforcement notice do not constitute a breach of planning control. The onus of proof is on the appellant and the standard of proof is the balance of probabilities. The appellant argues that there has been no material change of use of 5-7 Back Granville Road as alleged by the enforcement notice, meaning that development has not taken place which would require planning permission.
10. The appellant suggests that the lawful use of the appeal building is 'B1 offices' as defined under Schedule 2 of the *Town and Country Planning (Use Classes) Order 1987* (the UCO) and described further below. The appellant has stated that the building was leased on the basis that planning permission was granted for B1 use in 2006. The Council accepted in its statement of case that B1 was the 'former' use, but it has no record of the 2006 permission, and described the 'authorised use as A2 professional services' in its enforcement report¹.
11. In 2008, I determined an unrelated appeal relating to nos. 5-7, but that decision only concerned whether planning permission ought to be granted for operational development. I stated that the building was 'converted to offices' but said no more about the use or planning history². I cannot now assume that the lawful use of the property is B1, but I shall take account of that claim by the appellant – in order to justice to his case and since it makes no difference to the outcome of this appeal.

¹ Class A2 is use for the provision of financial services; professional services (other than health or medical); or any other services which it is appropriate to provide in a shopping area, principally to visiting members of the public.

² Appeal ref: APP/E2734/A/08/2077274

12. Article 3(6)(f) of the UCO is clear that use as a taxi business is not included in any class specified in Schedule 2. It does not follow that an unauthorised change of use of the appeal building to a taxi office *must* be development in breach of planning control, but Article 3(6)(f) puts the onus on the appellant to show that the taxi office is not materially different to the lawful use as a matter of fact and degree.
13. The appellant indicates that the appeal taxi office operates like a B1 use because taxi drivers do not park at or near to the premises; they do not collect customers from the site; and there is no customer waiting area because bookings are made by telephone. Even if all of this is true, a list of activities not carried out does not tell me whether the appeal use has a B1 character as a matter of fact and degree.
14. The UCO defines B1 as including use as an office, other than a use within class A2, and being a use which can be carried out in any residential area without detriment to the amenity of that area by reason of noise. The appellant accepts in this case, albeit in relation to ground (a), that 'an unrestricted taxi operation at the premises could give rise to disturbance and harm'. If this appeal was to succeed on ground (c), the notice would be quashed. The appellant and his successors in title would be able to run a taxi office from the building with no limitations on the use.
15. Where the primary use of a building is B1 (or A2), the activities carried out largely take place within the property. The purpose of a taxi business is to provide an off-site service whereby customers are driven from one place to another. The activities which take place inside a taxi office, bookings and administration, enable drivers to make those journeys. If the appeal succeeds on ground (c), there would be nothing to prevent the appellant from providing a customer waiting area. Customers could wait on and be collected from Back Granville Road in any event – while taxi drivers also visit the office to pick up or drop off colleagues or paperwork.
16. It further strikes me that drivers might visit the building to wait between bookings or take comfort breaks; there does not appear to be any other land or property in the appellant's control for drivers to use for those purposes. However, even if that last point is wrong, the nature of a taxi business is such that drivers employed by the firm need to travel to and from the office. In this case, the appellant's drivers could park on-street subject to regulations and availability – or 'pull up' by the building, as the appellant suggests that they do.
17. Any B1 use could generate vehicular movements – as could an A2 use, where customers visit the office. However, it is not necessarily the case that a building in B1 or A2 use would require an ancillary stopping or parking area; that would depend on the nature, scale and location of the use. Furthermore, it would be rare for staff or customers to wait outside of a B1 or A2 office. However, since the appeal taxi office facilitates a carriage service, it is liable by its very nature to generate significant vehicular, if not also pedestrian activity in the vicinity.
18. The appellant has not demonstrated that the character of the appeal use is not materially different to a B1 use as a matter of fact and degree. On the balance of probabilities, I conclude that there has been a material change of use as alleged, for which permission is required but not granted. There has been a breach of planning control and the appeal on ground (c) fails.

The Appeal on Ground (a)

Main Issues

19. I consider that the main issues are the effect of the appeal taxi office use on the living conditions of nearby occupiers, and on highway safety.

Reasons

Living Conditions

20. The appellant employs some 20 drivers, indicating that several might work on any shift. The Council has received objections from local residents that they experience noise and disturbance from taxi drivers parking or stopping on Back Granville Road; sitting in their vehicles with engines idling; using radios and phones; and collecting customers. They have submitted photographs of stationary vehicles on double yellow lines outside of or near to the site.
21. The appellant suggests that that evidence is not substantiated or accurate. I accept that there may be explanations for some of the incidents photographed, and the pictures do not show in any event why or how the appeal use might cause unacceptable noise. However, it is still necessary for me to address the *concerns* of local residents, and I have noted that the appellant himself accepts a need to 'restrict' the appeal use in order to prevent unacceptable disturbance.
22. As noted above, drivers would need to visit the appeal building at times, and they could park or stop as permitted on Back Granville Road. If the use is not restricted, customers could wait at and be collected from the site. From car movements, the slamming of brakes and doors, the revving of engines, the use of car radios and drivers or customers congregating and conversing, I find that an unrestricted use of the building as a taxi office would give rise to intermittent and sudden bursts of noise of varied types, levels and intensity.
23. If there was no taxi office on Back Granville Road, there would still be vehicular noise during the day and evening. The road is busy, as evidenced by the parking restrictions, because it is close to the town centre and commercial uses. However, and although there are restaurants and a hotel nearby, I also find that the mixed character of the area would cause background noise to fall at night. The dwellings behind the coach houses have windows to habitable rooms within a few metres of Back Granville Road. The appellant runs his business 24/7; unrestricted use of the office would result in unacceptable disturbance to local residents at late hours.
24. The appellant has offered to make a unilateral undertaking to confine the operations at the premises to their permitted use. No such undertaking has been submitted, however, and I do not have details of the 2006 permission, including any conditions which may have been attached. Even if the lawful use is B1, the appeal use does not fall within that class or operate akin to a B1 office.
25. It would be possible to permit use as a taxi office subject to conditions – but these would need to meet the tests set out in the *National Planning Policy Framework* (the Framework) of enforceability and reasonableness. The *Planning Practice Guidance* (PPG) states that a condition placing a disproportionate financial burden on an applicant will be unreasonable – and that would preclude, in my view, any condition which sought to restrict the hours of operation of the appeal taxi firm.
26. A condition that prevented the provision of a customer waiting area *inside* the appeal building would not be unreasonable; many taxi firms operate with no such facility. However, a condition which sought to prevent customers from waiting on the public highway would not be enforceable or reasonable. The appellant suggests that drivers photographed in taxis by his office were collecting on behalf of other firms – but that is still enough to show that pick-ups can take place on-street.
27. There are no photographs of waiting customers; I also accept that the appellant requires telephone bookings and locks his office at night – from which signage has been removed. From the evidence overall, however, I remain of the view that

- some customers would likely be collected from Back Granville Road – and the appellant’s drivers would need to visit the office for other purposes at times.
28. The appellant has conceded that his drivers pull up by the appeal building, even if they do not park ‘for any length of time’. When a driver pulls up, they apply the handbrake to stop the vehicle from moving, but do not turn off the engine. The appellant suggests that his drivers do not use the on-street parking bays on Back Granville Road to avoid antagonising neighbours – but it would make little difference to nearby residents if drivers pull up or park; both activities would create noise that is audible from adjacent dwellings at night.
29. The appellant suggests that drivers can wait on designated taxi ranks between bookings; a colleague Inspector accepted that point when the appellant made it in support of a different appeal³. However, the company operates private hire as well as hackney cabs, and the former are booked by phone. I also note that drivers might not wish to wait on ranks between pre-booked jobs, or find spaces available.
30. The appellant stated that his drivers would ‘park appropriately and legally so as not to disturb any residents’, but he did not give precise locations and his firm would need to be viable⁴. Planning permission runs with the land, and I must consider the impact of the use in perpetuity. Imposing a condition to stop drivers from visiting the office, or even to limit the number of visits, would make it unreasonably difficult for the appellant to run his business. I could not prevent drivers from parking or stopping on-street in accordance with regulations. The use could not be controlled so as to reduce outdoor activity and noise to satisfactory levels at night.
31. Local residents have objected to the noise of telephones ringing inside the appeal building. I accept that such sounds might add to disturbance caused by vehicles and people in the street, but would not dismiss the appeal solely on that basis. If the appeal building has a lawful office use, it is likely that activities therein would involve the receiving of calls. There is also insufficient evidence for me to refuse permission for the use because of anti-social behaviour.
32. Nevertheless, I conclude that permitting the appeal taxi office use would result in unacceptable harm to the living conditions of nearby occupiers, through outdoor noise and disturbance. It would conflict with Saved Policy HD20 of the *Harrogate District Local Plan* (LP), Policy SG4 of the *Harrogate District Core Strategy* (CS) and the Framework, which expect development to respect or protect the amenity of nearby residents, and secure a good standard of amenity for occupants of land.

Highway Safety

33. The appellant suggests that nearby commercial uses generate significant activity and Back Granville Road is a ‘rat run’. I saw that the carriageway is reduced to one lane by the parking bays; when these are occupied and traffic levels are high, drivers have restricted visibility and/or find it hard to turn in and out of spaces. In the daytime and evening, therefore, insufficient on-street parking spaces would normally be available for visiting taxi drivers, and their vehicular movements would exacerbate congestion so as to materially increase the risk of traffic accident.
34. Although use of the on-street parking spaces is not restricted between 20.00 and 09.00 hours, the appellant has stated that his drivers do not use those bays at any time. From this submission and the number of other properties nearby, I would expect there to be continued demand for on-street parking beyond 20.00 – but it makes little difference if that statement is wrong. Whether or not sufficient on-

³ Appeal ref: APP/E2734/W/16/3153761, decision dated 10 November 2016

⁴ Letter from the appellant to local residents dated 4 August 2016.

street parking bays would generally be available for the appellant's drivers during the de-regulated hours, this would not overcome my concerns regarding the impact of the use on highway safety during the day – or local residents at night.

35. I am also concerned that taxi drivers would sometimes be tempted to stop by the appeal building on double yellow lines. The appellant accepts that parking outside of the office would block the street, but 'pulling up' would cause the same harm. I realise that the Highways Authority could enforce its parking regulations, but that would be difficult if drivers stop for short periods – when collecting customers or colleagues. The photographs of stationary taxis on Back Granville Road add weight to this objection, even if the cabs shown belong to other firms.
36. Since the appellant refutes that drivers often visit the site, he has not properly addressed the Council's reasonable highway safety concerns. His argument that the flow of traffic on Back Granville Road is already impeded would not justify my deciding to make the situation worse. The appellant has not shown to that there are adequate and safe parking facilities, given that there will normally be vehicular activity in the vicinity of a taxi office by the nature of the business.
37. I conclude that the appeal use is likely to cause an unacceptable loss of highway safety. It conflicts with CS Policy SG4, LP Policy HD20 and the Framework, which expect development to not add significantly to any pre-existing problems of road safety or traffic flow; pay attention to the provision of a safe environment; and be designed where practical to create safe and secure layouts.

Other Matters and Conclusion

38. The appellant's office staff and drivers rely on him for their livelihood. He ran his business for many years from another building until the lease was terminated so that the site could be redeveloped. I accept that his company adds to the town centre economy – which the CS and Framework seek to support – and will be valued by users of town centre facilities. I also note that he has looked for other premises but did not succeed in his Cheltenham Crescent appeal. I am sympathetic to his situation, but the economic and/or social benefits of the use are not sufficient to outweigh or justify the harm identified above.
39. The appellant has described another taxi firm which operates from a B1 office and has no facilities for parking or customer waiting. I saw a stationary cab on double yellow lines outside of that site. However, the Council indicates that the property benefits from a historic permission for a taxi use, with the later B1 permission being unimplemented. Whatever the lawful use in that case, this ground (a) appeal must be determined on its merits. I do not have sufficient information about the other taxi office to justify my allowing the development before me. The taxi offices established in other residential areas do not set a precedent for this appeal.
40. The appeal site lies with the Harrogate Conservation Area, but the Council does not object to the impact of the appeal use on heritage grounds. I am satisfied that the use preserves the character and appearance of the conservation area, and conserves the heritage asset in a manner appropriate with its significance. This finding does not alter or outweigh my conclusions on the main issues.
41. For the reasons given and with regard to all other matters raised, I conclude that the appeal should fail on ground (a) and planning permission should be refused.

The Appeal on Ground (f)

42. The appeal on ground (f) is that the requirements of the notices are excessive to remedy the breach of planning control or injury to amenity. The notice alleges that

there has been a material change of use, and it requires that the unauthorised use must cease; the purpose of the notice is thus to remedy the breach.

43. The appellant argues that it is excessive to require cessation of the use, because he could remedy the harm to amenity through his undertaking to restrict the use. I found under ground (a) that the use causes unacceptable harm which could not be overcome by planning conditions, and no undertaking has been submitted. The same arguments cannot be re-run under ground (f).
44. The appellant has not appealed against requirements 2 or 3. For the avoidance of doubt, where a notice alleges that a material change of use has occurred, it may require the cessation of the use and removal of items which facilitate the use, in order that the property is restored to its previous condition. The appellant erected signage to facilitate the unauthorised change of use. It is not excessive to uphold the requirements that the signage be removed, even if that has already occurred.
45. The appellant has not shown that the requirements of the notice are excessive to remedy the breach of planning control. He has not proposed any lesser steps which would achieve that purpose. The appeal on ground (f) fails.

The Appeal on Ground (g)

46. Ground (g) is that the period specified in the notice for compliance with the steps falls short of what is reasonable. The appellant argues that the notice should be varied so as to allow three months for compliance, so that he may find alternative premises and his employees will not lose their livelihoods. I have noted that the appellant was forced to leave his previous premises, and his appeal relating to Cheltenham Crescent was dismissed.
47. The Council has pointed out that a taxi office does not fall under use class B1. Accordingly, the schedule of available 'office accommodation' produced by the Council is of little assistance; it does not definitively identify accommodation which would be suitable for the appellant's business.
48. The harm caused by the unauthorised use is severe, but it would not be unduly prolonged if the period for compliance is extended to three months. I find that this would strike a reasonable balance between the public and private interests in this case, and give the appellant adequate time to look for suitable alternative premises for his established business. The appeal on ground (g) succeeds.

Conclusion

49. For the reasons given and with regard to all other matters raised, I conclude that the enforcement notice should be varied and the appeal should be dismissed.

Jean Russell

INSPECTOR