
Appeal Decision

Site visit made on 19 April 2017

by Nigel Burrows BA MRTPI

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

Decision date: 16 May 2017

Appeal Ref: APP/B1550/C/16/3158388

Land at 25 Leonard Drive, Rayleigh, Essex, SS6 9EA

- 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 Mrs Belinda Singh against an enforcement notice issued by Rochford District Council.
- The enforcement notice, ref: 16/00045/COU_C was issued on 22 August 2016.
- The breach of planning control as alleged in the notice is described as:

'Without planning permission the change of use of a residential property to a mixed use of residential, commercial waste transfer and the storage of two commercial waste bins in association with "Grubs Up Food Hut" trading at 173 High Street, Rayleigh (shown outlined in bold and hatched on the attached plan)'.

- The requirements of the notice are:
 1. Cease the use of the residential premises for the storage of commercial waste bins and commercial waste transfer.
 2. Remove from the site, all commercial bins.
- The period for compliance with the requirements is two (2) 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 Decision: The appeal is dismissed and the enforcement notice is upheld with a variation

Background

1. The appeal relates to a detached chalet-style dwelling situated on the corner of Leonard Drive and Louis Drive within a predominantly residential area of Rayleigh. As indicated in the heading above, the enforcement notice alleges that a change of use of the property has occurred to a mixed use comprising residential, commercial waste transfer and the storage of two commercial waste bins in association with 173 High Street, Rayleigh. The appellant¹ runs a café business from the latter premises, which is roughly 3.2 km away.

The appeal on ground (b)

2. The issue under ground (b) is whether or not the breach of planning control alleged in the notice has occurred as a matter of fact. The appellant states: "*A waste transfer site or station is defined as a site or building where local waste collection vehicles (i.e. rubbish lorries) deposit their waste cargo to be sorted, prior to loading into larger vehicles for transportation onto their end point of disposal (i.e. incinerator, landfill).*" The appellant has provided extracts from internet sources in support of this definition.
3. The appellant states: "*We do not and have never run a waste transfer site or station, either privately or commercially ...*" On the evidence before me, I agree the property does not appear to be used as a depot for the storage, sorting and transfer of waste in the terms envisaged in the appellant's definition. However, the notice does not allege the property is

¹ Together with her husband

being used as a 'waste transfer site or station' - it is alleged the property is in a mixed use, including 'commercial waste transfer and the storage of two commercial waste bins'.

4. I observed there are two commercial waste bins alongside the side elevation of the dwelling facing Louis Drive. According to the appellant, these commercial bins are used mostly for household waste that will not fit in domestic bins. Be that as it may, there appears to be no dispute that the bins in question are also used for the storage of commercial waste from the appellant's café. At the time of my visit, one of the bins appeared to be intended for general waste and the other for the recycling of waste.²
5. According to a resident who lives opposite, the bins are used once a day when the appellant returns home from the café and puts commercial waste in them. There appears to be no dispute that they are emptied by a licensed operator. The bins are clearly non-residential in nature and are used for a purpose that is not wholly residential. I consider the storage and transfer of commercial waste is being undertaken as alleged in the notice.
6. On the evidence before me, I conclude the alleged breach of planning control has been adequately described in the enforcement notice. I also conclude the breach of control alleged in the notice has occurred as a matter of fact. The ground (b) appeal fails.

The appeal on ground (c)

7. The onus is firmly on the appellant under ground (c) to make out the case that there has not been a breach of planning control. In effect, the appellant needs to demonstrate that development has not occurred for the purposes of section 55 of the Town and Country Planning Act 1990, or the use does not require planning permission.
8. The Council's stance is that a material change of use of the appeal property has occurred.³ The concept of a material change of use is not defined in any statute or statutory instrument. It is a question of fact and degree in each particular case.
9. There appears to be no dispute that 25 Leonard Drive may lawfully be used as a single family dwellinghouse. The appellant's stance is that planning permission is not required to operate a business from her family home. She derives support from the Planning Portal, which advises that the key test is whether the overall character of the dwelling will change as a result of the business. In this respect, the appellant states: "*The bins in question take up approximately ½ % of the overall ground of the premises, so are therefore clearly not of a materialistic impact and will definitely not change the character of the dwelling.* "
10. However, in my view the storage and transfer of commercial waste is not an activity that would normally fall within the range of activities associated with a single family dwelling. I do not consider this activity would be incidental or ancillary to the occupation of the appellant's property as a single family dwelling. Whilst this activity might be comparatively modest in scale, it is not insignificant. It has resulted in a change in the overall character of the dwelling, not least because of the intrusive nature of the commercial bins in Louis Drive and the fact that they need to be emptied by a licensed operator. I consider this activity to be unusual within a predominantly residential area.
11. According to a local resident these bins are well maintained and they never overflow; they are not emptied at unsocial times and cause no disruption to local residents. However, there is also local opposition to the activity on the grounds that the bins are an eyesore and could attract vermin. In any event, on the balance of probability, I conclude that a material change of use of the property has taken place without the necessary planning permission and a breach of planning control has occurred, as alleged in the enforcement notice. I therefore conclude the ground (c) appeal should not succeed.

² The commercial bins appear to belong to Cory and Biffa

³ The word 'material' is not included in the allegation in the enforcement notice. However, this omission does not go to the heart of the notice or otherwise render it invalid

The appeal on ground (f)

12. The issue under the ground (f) appeal is whether the steps required by the enforcement notice exceed what is necessary to remedy the breach of planning control or, as the case may be, to remedy any injury to amenity caused by the extension.
13. The manner in which the Council has prepared the enforcement notice against the mixed use of the property (including the formulation of its requirements) indicates that its purpose is to remedy the breach of planning control in accordance with section 173(4)(a) of the Act, by restoring the land to its condition before the breach took place.
14. The appellant alleges the requirement to cease the use of the premises for the storage of commercial waste bins and transfer of commercial waste would result in the closure of the café. It is alleged the café could not operate without these bins. However, there is no firm evidence to demonstrate the closure of the café would be an inevitable consequence of upholding the notice. The appellant also claims their removal would leave her large family without adequate facilities for household rubbish. The Council says that larger domestic bins could be issued to address any concerns about adequate provision for household waste.
15. The appellant does not appear to advance any other specific arguments to indicate what lesser steps might be substituted for the requirements of the notice. In any event, I consider these requirements are not unduly onerous or excessive. It is not obvious to me that there are any lesser steps which would remedy the breach of control in this instance, or which would satisfy the purpose in section 173(4)(a). The ground (f) appeal fails.

Other Considerations

16. The appellant has not lodged the appeal on ground (g) - that the two-week period given to comply with the notice is too short. The Council considers this period is appropriate as the appellant was initially given a period of 3 months to remedy the breach of planning control.
17. However, the appellant is entitled to assume success on appeal and, should this fail, she is entitled to a reasonable period for compliance after the notice takes effect. To my mind, a compliance period of two weeks could create severe logistical problems for the business. Consequently, the appellant should be given more time to explore alternative arrangements for the disposal of commercial waste from the café or otherwise to comply with the notice.
18. In this instance, I conclude that a compliance period of 2 months would be a more proportionate and reasonable response to the breach of planning control. This period would give the appellant more time to explore the options that might be available, without unnecessarily prolonging the adverse impact of the mixed use attacked by the enforcement notice. I intend to vary the period for compliance with the notice accordingly.

Overall Conclusions

19. For the reasons given above, I conclude the enforcement notice should be upheld, albeit with a variation. I have taken into account all the other matters raised. However, I find they do not alter or outweigh the main considerations that have led to my decision.

Formal Decision

20. The enforcement notice is varied by the deletion of '*Two (2) weeks*' in paragraph 5 and the substitution of '*2 months*' as the period for compliance with the notice. Subject to this variation, the appeal is dismissed and the enforcement notice is upheld.

Nigel Burrows

INSPECTOR