The Planning Inspectorate

Appeal Decision

Site visit made on 4 April 2017

by Stephen Brown MA(Cantab) DipArch RIBA

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

Decision date: 08 June 2017

Appeal Ref: APP/X2220/C/16/3156254
The Former Gas Holder Station, Land to the south-east side of Coombe Valley Road, Dover.

- 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 Mr V Bloomfield of Trans-Stor Logistics Ltd against an enforcement notice issued by Dover District Council.
- The enforcement notice, ref. ENF/DOV/15/00245, was issued on 4 July 2016.
- The breach of planning control as alleged in the notice is without the benefit of planning permission, the unauthorised material change of use of the land for lorry parking and storage.
- The requirements of the notice are to:
  1. Cease use of the land for lorry parking, vehicle and caravan storage.
  2. Remove the buildings and structures shown in photographs F, G and H and marked 1, 3 and 4 on the plan attached to the notice. Remove any resultant rubble, rubbish and materials from the land.
  3. Remove any adverts, lighting, equipment or other paraphernalia associated with the unauthorised use of the land.
- The period for compliance with the requirements is three calendar months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c) and (g) of the Town and Country Planning Act 1990 as amended. The prescribed fees have been paid within the specified period, and the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be considered.

Decision

1. The appeal is allowed on ground (g), and I direct that the enforcement notice be varied by:

   DELETION of the words *'three (3) calendar months'* from paragraph 6 of the enforcement notice; and,

   SUBSTITUTION of the words *'six (6) months'.*

   Subject to that variation the enforcement notice is upheld

Background matters

2. The appeal site lies on the southern side of Coombe Valley Road in close proximity to a main railway line to the east – separated from the site by Edgar Road, and the terrace of houses on western side of that road. I also saw a quite newly built pair of semi-detached houses on the corner of Edgar Road and Coombe Valley Road. There is a gas holder and associated compound to the north-west of the appellants' operations area - adjacent to the appeal site road

entrance – and there is a builders' merchants' warehouse on the opposite side of Coombe Valley Road. Immediately to the south is Prospect Place, which is raised several metres above the level of the appeal site. The row of terraced and semi-detached houses along the southern side of Prospect Place looks directly over the appeal site.

3. Looking at the slightly wider area, there are quite substantial housing sites to the south and west of the site – recently developed or in the process of development – and other light industrial or distribution uses. I also saw there is a care home nearby, and a hospital further to the west. Coombe Valley Road also provides a principal access to a substantial industrial estate on Poulton Close, some 1000 metres to the west.

The appeal on ground (c)

4. In an appeal on this ground the burden of proof is on the appellant to show that on the balance of probabilities there has not been a breach of planning control. This is argued principally on the basis that the site has been in a lawful Class B8 use (storage and distribution), and the current use should be seen as being in the same Use Class.

5. Until about 1978 the appeal site and the area where the gasholder and compound now are formed a single site, all owned by National Grid, who now let the appeal site to the appellant company. In 1978 planning permission was granted for part of the appeal site to be used as a joinery workshop with an associated wood-chip silo[1], and this permission was apparently implemented. This would most probably have been a B1 or B2 primary use.

6. Aerial photographs put in by the Council show that in 1990 there were several substantial buildings, and a number of vehicles parked around. I saw a concrete slab on the site, where I understand the joinery works had stood. However, by 2002 that building was no longer there. Subsequent aerial photographs show a progressive deterioration – apart from the gasholder and compound, which still appear active – until 2013, when the appeal site was clearly overgrown. I concur with the Council's view that the industrial/light industrial use had probably been abandoned. I have seen little to suggest that the site was in a B8 use, but if so, I consider that too had been abandoned.

7. Irrespective of the previous use, the use for parking and storage of vehicles does not fall into any of the classes set out in The Town and Country Planning (Use Classes) Order 1987. Parking and storage should be seen as quite distinct activities in planning terms. Parking means leaving a vehicle while it is in current use, whether long or short term. It is a temporary cessation from when the vehicle is in motion and is still in use when it is parked. This in itself is a *sui generis* use. On the other hand storage takes place when something is put away for a period of time because it is not needed or its use is not contemplated in the short term. In my opinion there is a mixed use of the site which must be regarded as *sui generis*.

8. No planning permission has been granted for this mixed use, nor was it an extant lawful use of the site. On the balance of probabilities a breach of planning control has therefore occurred, and the appeal on ground (c) must fail.

[1] Decision notice ref. DO/78/37.

The appeal on ground (a)

9. This ground is that planning permission should be granted for the material change of use alleged in the enforcement notice.

10. There are three structures that are subject of the notice, in use as the site office with a kitchenette and store, a drivers' shower/WC block, and a drivers' canteen. At the time of my visit there were some 6 heavy goods vehicles on the site, as well as about 4 trailers, and a container. There were also number of cars and vans on the staff car-park next to the site office, and a partly cordoned off area used by a recovery firm that picks up damaged cars. I saw that the appellants have erected acoustic fencing along the eastern site boundary close to the rear garden boundaries of the terraced house on Edgar Road.

11. From my inspection of the appeal site and its surroundings, and from the written representations made I consider the main issues in this appeal to be:

    - The effect of the alleged development on living conditions for occupants of dwellings in the vicinity of the appeal site in terms of noise and general disturbance.

12. There are a considerable number of houses in close proximity to the appeal site. The back gardens of houses on Edgar Road have a common boundary with the appeal site, and the backs of the houses themselves are little more than 10 or 12 metres from the boundary. The fronts of the houses on Prospect Row look directly over the appeal site, and again are about 10-12 metres from the boundary.

13. I understand from representations put in by third parties that there can be lorry movements in the early hours, engines are sometimes left running, and mandatory reversing warnings can be heard. Horns are sometimes sounded. There is an external area next to the drivers' canteen where drivers can socialise, and radios and conversation can be heard. I do not consider this use of the site is by any means compatible with the nearby residential uses – particularly in summer time, when windows are often left open. In my opinion it is highly likely that there is significant harm caused to the living conditions for occupants of these houses in terms of noise and general disturbance.

14. The appellant argues that these houses are next to an industrial site, and their occupants should expect industrial/commercial activities to occur there. However, the site has not been in use for many years, and the previous known use was as a joiner's workshop. Although I have no details of this, it is reasonable to assume that the workshop operated during regular working hours in the day-time, most of the activity would have been enclosed in the building, and there would have been deliveries to and from the site – again, during normal working hours. Also, this was a use that had been granted planning permission, and must have been subject to consultation, and possibly subject to conditions on such matters as noise limitation. In these circumstances I consider occupants of the nearby houses have a reasonable expectation for peace and quiet, rather than an expectation of virtually uncontrolled industrial/commercial activity.

15. This picture is in distinct contrast to the present situation, where, as the Council say there are concerns about engine noise, braking noise, vibration, headlights, and likely exhaust fumes. There is relatively little in the way of

noise protection, lorry movements can occur at any time of day, and engines can be left running, and most activity is in the open air. I accept that this could be controlled to some extent by imposition of a planning condition on hours of use, but this would not to my mind result in a use of the site that was acceptable in terms of residential amenity.

16. I appreciate that the appellant's lease on the site expires in November 2018, at which time the landlord may require possession or may extend the lease. However, I do not consider that nearby residents should be required to live with the site in its present use for this relatively long period.

17. I conclude on the first main issue that the use of the site for lorry parking and storage causes significant harm as a result of its effects upon living conditions for occupants of dwellings in the vicinity of the appeal site in terms of noise and general disturbance.

18. Regarding possible highway issues, the Highways Authority have advised that if there is no established land use for the site, all traffic movements generated should be regarded as new trips, and that routing lorries onto this part of the road network would be unacceptable. I saw that one of the principal routes into and out of the appeal site necessitates passing under the railway bridge about 80 metres to the east of the site access. This is single lane, and controlled by traffic lights. I understand it is also used by traffic from the industrial estate, and the builders' merchants opposite the appeal site, as well as other commercial users and residential traffic.

19. I concur with the view that this site does not have an established lawful use, and although I saw little congestion at the time of my visit, I consider the additional traffic generated by the appeal site would probably exacerbate the likelihood of such congestion at the railway bridge. This adds weight to my conclusion on the main issue.

20. The Council do not put forward any development plan policy relating to protection of residential amenity, but argue that allowing the present use would hamper potential redevelopment. This is in the context that Policy LA 8 of the Dover District Land Allocations Plan of 2015, which allocates the appeal site for housing, subject to any Health and Safety Executive requirements for development in proximity to gas holders. However, to my knowledge no plan has yet been put forward for such redevelopment. Although it may well come about this appears to be unlikely within the period of the appellants' current lease. I give little weight to the Council's argument in this regard, but this does not lessen the harm that is already being caused.

21. Allowing the use for lorry parking and storage cannot in my opinion be regarded as a sustainable form of development in that it does not contribute to creation of a high quality of environment, or to enhancement of the environment, as sought by the advice of paragraph 7 of the National Planning Policy Framework (NPPF). Nor is this a case where the adverse impacts of the development can be said to be outweighed by its benefits, or one that would achieve a high standard of amenity for existing and future occupants of the land – contrary to the advice of NPPF paragraphs 14 and 17.

The appeal on ground (g)

22. This ground is that the stated compliance period is too short. The appellants argue that 3 months does not allow them sufficient time to find an alternative site, and suggests that 12 months should be allowed. I have no evidence that the appellants have made attempts to find other suitable sites, but the Council have suggested there may be sites available that would avoid the need to travel through the town centre and residential areas. I consider the 3 month compliance period may be too short to find an alternative site and agree lease arrangements, but that a period of 6 months would be more realistic. I therefore allow the appeal on ground (g), and will vary the enforcement notice accordingly.

Conclusions

23. For the reasons given above and having regard to all other matters raised, I consider the appeal should not succeed, except to the limited extent on ground (g), and I intend to uphold the notice with the variation referred to.

Stephen Brown

INSPECTOR