
Appeal Decision

Site visit made on 5 July 2017

by Sandra Prail MBA, LLB (Hons), Solicitor (non-practising)

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

Decision date: 27 July 2017

Appeal Ref : APP/Z5630/C/16/3161336

Land at Unit 7 Sage Yard, Douglas Road, Surbiton, KT6 7RZ.

- 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 Central Rubbish Clearance against an enforcement notice issued by the Council of the London Borough of Kingston upon Thames.
- The notice was issued on 20 September 2016.
- The breach of planning control as alleged in the notice is without the grant of planning permission, the material change of use of the land to a waste transfer station.
- The requirements of the notice are 1. cease the use of the land for the receipt, selling, sorting, storage and distribution of all waste materials; 2. remove all buildings and enclosures associated with the use; 3. remove all equipment, vehicles, waste material and other materials in conjunction with the above use from the land; and 4. remove from the land all debris arising from compliance with 1. above.
- The period for compliance with the requirements is five months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: the appeal is allowed, the enforcement notice is quashed and planning permission is granted in the terms set out below in the Formal Decision.

Ground (d)

1. This ground of appeal is that, at the date when the notice was issued, it was too late to take action. In this case no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.
2. The onus of proof rests on the Appellant on the balance of probabilities. In order for the use the subject of this appeal to be immune from enforcement action it must be shown to have taken place for a period of ten years beginning with the date of the breach and for that use to have been continuous during that period. The relevant period is therefore September 2006 – September 2016.
3. The Appellant argues that the site has been used as a waste transfer station for the temporary deposition of waste since he purchased the site in 2005. Prior to his purchase of the site it was being used as a builders yard. The Appellant by way of statutory declaration says that in 2006 he and one employee would collect rubbish from customers and store it in 2 old vans on the appeal site. Mixed rubbish was stored in bags, wood was stored in one of the vans and hardcore and soil onsite. A skip company would collect bags and hardcore once a week. Mixed paper and cardboard was stored in bags in the portacabin and

collected by a third party. In connection with registration with the Environment Agency as an exempt waste operation he says that in 2010/11 he introduced wooden containers to enable the segregation of waste for storage. I am provided with supporting evidence including a letter from accountants dated 2016 stating that a rubbish clearance business has operated from the site since the end of 2005; letters from a residential and commercial neighbour stating that rubbish has been brought by van into the yard for storing and recycling since 2005; invoices for skip hire and cardboard removal and advertisements for the Appellant's rubbish clearance business.

4. The Appellant's evidence does not need to be independently corroborated in order to be believed but the Council's evidence casts doubt on the Appellant's case. In particular planning permission granted for a portable cabin on the site in 2006 refers to the main use of the site as a yard for the parking of builders vans, plant and skip and the sale of vans.
5. There is no evidence before me of the scale of use and quantity of rubbish storage over the relevant ten year period. Evidence of skip hire and cardboard removal may be consistent with use as a builders yard. The descriptions provided by neighbours lack detail and whilst rubbish might have been stored since 2005 I have nothing to quantify whether the scale was consistent with a builders yard operation rather than a waste transfer station.
6. I am not persuaded on the evidence before me that on the balance of probabilities the site has been in continuous use as a waste transfer centre for the relevant ten year period. The Appellant has not discharged the burden of proof that rests upon him in this ground of appeal.
7. Consequently, the ground (d) appeal fails.

Ground (a) appeal and deemed application

8. The main issues in the determination of this appeal are the effect of the development on (i) the character and appearance of the area and (ii) the living conditions of occupiers of nearby properties with particular regard to noise and disturbance.

Character and appearance

9. The development plan (including the London Plan and the Kingston Core Strategy) mirrors the National Planning Policy Framework (the Framework) and the National Planning Policy for Waste (the NPPW) in emphasising the importance of sustainable waste management. Policy DM17 of the Core Strategy provides that uses of an industrial and employment nature will be protected and there is no dispute between the parties that the principle of the use accords with the development plan. Policy DM10 of the Core Strategy provides that development should have regard to the amenities of neighbours, including in terms of visual intrusion.
10. The appeal site is located in a mixed use area with commercial and residential properties in the surrounding area. No 1 Douglas Road, a two storey dwellinghouse, is in close proximity to the site. To the north lie a number of commercial units. A driving test centre is nearby. The site has a security gate and is enclosed by high walls. Inside the site is a concrete hardstanding and fifteen wooden enclosures each holding different types of waste (including wood, paper and metal) and a portacabin used as an office. At the time of issue

of the notice the Council say that some of the timber buildings and enclosures were not roofed.

11. Two vans collect waste from local businesses and residents and bring it to the appeal site. The waste is sorted by hand when it is delivered to the appeal site and placed in wooden enclosures depending on the types of waste. When each particular type of waste reaches a critical amount it is loaded onto a van and transported to a certified waste centre. Two office staff work in the portacabin and two workers drive, unload, load sort and store the waste.
12. Planning permission has been granted for use of the site as a builders yard, including the parking of builders vans and storage of materials. I am advised that this permission includes a condition that materials and equipment should be stacked to a maximum height of 5ft above ground level to limit visual intrusion.
13. The Council consider that the buildings, enclosures and open storage of waste (particularly if stacked as high or higher than the existing site boundary in non roofed enclosures) create a cluttered appearance particularly when viewed from the neighbouring residential dwellings. Letters of representation are before me from neighbours both supporting and objecting to the development but I note that none refers to an adverse visual appearance.
14. The reasonable expectations of occupiers of neighbouring residential dwellings must be considered in the mixed use context of the locality and the fallback position as a builders yard. I find the site to be neat in appearance and the timber enclosures are not incongruous. On balance I consider the appearance of the site to be in keeping with its surroundings and it does not cause undue harm to the character and appearance of the surrounding area. I do not find the unauthorised use to create significantly more visual intrusion than that of a builders yard. The storage of building materials would be likely to be no less visually intrusive for neighbours of nearby residential properties than the storage of waste in roofed enclosures. The concern about stacking of material could be adequately controlled by condition.
15. On balance I conclude that the use as a waste transfer station for the temporary storage of rubbish in segregated areas before being loaded onto vehicles and taken away for treatment does not cause undue harm to the character and appearance of the surrounding mixed use area. It is not contrary to the development plan, Framework or NPPW.

Living conditions

16. Policy DM10 of the Core Strategy provides that development should have regard to the amenities of occupants and neighbours, including in terms of noise and disturbance.
17. The loading, unloading and sorting of waste is done by hand in the yard area. There is no evidence before me of the use of any mechanical equipment.
18. I note that the council noted noise arising from manual loading and tipping of waste from a vehicle at a site visit but there is no quantified evidence or noise assessment before me. Letters of support and objection exist from nearby residential neighbours. One of these representations describes noise from manual sorting of waste which affects quiet enjoyment of a garden area during summer months. The close proximity of the appeal site to residential uses

means that there is a likelihood of some harm to the occupiers of or nearby residential properties by reason of noise and disturbance. But this harm could be overcome by conditions restricting hours of operation.

19. In the absence of any noise assessment I am not persuaded on the evidence before me that the noise from the unauthorised use is any greater than that which would be likely from a builders yard. I conclude that the development if controlled by an hours of operation condition would not cause undue harm to the living conditions of occupiers of nearby residential properties with regard to noise and disturbance and accords with policies in the development plan.

Other matters

20. Reference is made to the portacabin, including its potential immunity from enforcement action but the notice concerns the use of the site.
21. The Council and a local neighbour refer me to the potential impact of the use of the site on highway safety. But there is no evidence of any adverse impact on highway safety and I do not consider this to be a main issue in the determination of this appeal. I am also referred to the potential for harm by reason of dust but this is not supported by any evidence.
22. Reference is made by a neighbour to an increase in fox activity but there is nothing before me to link this to activity at the appeal site.

Conditions

23. I have considered the need for conditions and have taken into account the Planning Practice Guidance. The Council has put forward conditions to be imposed on the grant of planning permission. The Appellant accepts the need for conditions to control hours of operation (including lighting) but considers that other matters are better controlled by the Environment Agency and the Control of Pollution Act.
24. I conclude that it is reasonable and necessary to control the hours of operation to protect the living conditions of occupiers of nearby residential properties. I have balanced the entitlement of residents to quiet enjoyment of their homes against the reasonable expectations of a business. I have not been provided with the hours of operation of neighbouring sites. The hours of operation of the business are 07.30 - 18.00 weekdays, 08.00 – 12.00 Saturdays and no Sunday or bank holiday working. The Council say that these hours are unreasonably early and propose 08.30 – 17.00 Mondays to Fridays, 09.00 – 12.00 on Saturdays and not at all on Sundays and bank holidays. The Appellant responds that 8am to 6pm Mondays to Fridays, 8 am to 12 noon Saturday and no Sunday working would be acceptable. I consider that 08.30 to 17.00 is a reasonable working day and that a later start and lunchtime closure on Saturdays is reasonable with no Sunday or Bank Holiday opening.
25. The Council draws attention to external floodlights located within the yard which they say would be unduly intrusive for neighbours preventing a reasonable enjoyment of the homes. I agree that lighting can be harmful and I consider that it would be reasonable and necessary to require the Appellant to seek Council consent for floodlighting.

26. In the absence of evidence of undue harm I do not consider it reasonable or necessary to impose a condition setting noise thresholds. This is a matter that can be adequately controlled by other legislative regimes.
27. I consider that it would be reasonable to control the height of materials stacked or deposited on the site to prevent undue visual intrusion. I therefore impose a condition to reflect the restriction on stacking height that appears on the permission for use as a builders yard.

Conclusion

28. For the reasons given above I conclude that the appeal should succeed on ground (a) and planning permission will be granted. The appeals on grounds (f) and (g) therefore do not need to be considered.

Formal Decision

29. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the Act as amended for the development already carried out, namely the use of land at Unit 7 Sage Yard, Douglas Road, Surbiton, KT6 7RZ as shown on the plan attached to the notice for use as a waste transfer station subject to the following conditions:
- 1) The site shall be used for the purposes hereby permitted only between 08.30 hours and 17.00 hours on Mondays to Fridays, 09.00 to 12.00 on Saturdays and not at any time on Sundays or on Bank or Public Holidays;
 - 2) Details of any floodlighting shall be submitted to and approved in writing by the local planning authority within 2 months of the date of this decision. The external lighting shall be installed in accordance with the approved details and thereby retained as such unless a variation is subsequently submitted to and approved in writing by the local planning authority;
 - 3) Materials shall not be stacked or deposited on the land above a height of 1.5 metres measured from ground level.

S. Prail

Inspector