



Appeal Decision

Site visit made on 4 July 2017

by **D H Brier BA MA MRTPI**

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

Decision date: 24 August 2017

Appeal Ref: APP/J1860/C/16/3142201-02

Elgar Coaches, Lightwood Lane, Cotheridge WR6 5LT

- 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 & Mrs B Burgoyne against an enforcement notice issued by Malvern Hills District Council.
- The enforcement notice was issued on 8 December 2015.
- The breach of planning control as alleged in the notice is the change of use of private grassed amenity area to a use for the parking of coaches and minibuses and operational development consisting of the laying of a hardstanding for the purpose of the parking and the part erection of an extension.
- The requirements of the notice are:
 1. Cease the use of the land hatched green on the plan attached to the notice for the parking of coaches and minibuses.
 2. Remove the hardstanding from the site frontage and reinstate the land to its former condition as a grassed amenity area.
 3. Demolish the partly erected extension as approximately hatched blue [on the plan attached to the notice] and lawfully remove all resulting materials from the land.
- The periods for compliance with the requirements are one month (requirement 1) and 3 months (requirements 2 and 3).
- The appeal by Mr B Burgoyne (ref APP/J1860/C/16/3142201) 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. In the case of the appeal by Mrs Burgoyne (ref APP/J1860/C/16/3142202) the appeal is proceeding on the grounds set out in section 174(2) (c) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, her appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
- This decision supersedes that issued on 21 September 2016. That decision was remitted for re-hearing and determination by consent order of the High Court.

Summary of Decision: The Notice is quashed.

The Appeal Site and the Enforcement Notice

1. The appeal site, as defined by the red line on the enforcement notice plan, is on the west side of Lightwood Lane, from which access to the site is taken. It encompasses a group of buildings arranged around the west, north and east sides of a concrete surfaced yard, together with associated land. The location of the extension referred to in the allegation is not indicated in this section of the notice, but requirement 5.3 indicates that it is "*as approximately hatched blue*" on the plan. Likewise, neither the location of what is termed "*a private grassed amenity area*", nor the "*hardstanding*", also referred to in the allegation, are indicated in the allegation as set out in section 3.

2. Requirement 5.1 requires the cessation of the use of the land shown hatched green on the enforcement notice plan for the parking of coaches. The plan shows 2 separate green hatched areas. One covers an area alongside the site's eastern boundary with Lightwood Lane. It extends to, and wraps around, 3 sides of a 3 bay former Dutch barn and is bounded to the south and south-west by the site's access. The other green hatched area, which extends to the site's boundary with Lower Lightfoot Farm Bungalow to the west, comprises the western part of the concrete surfaced yard plus a smaller area surfaced in unconsolidated hardcore to the south of it. As I observed at the site visit, the latter area appears to extend further to the south, beyond the red line shown on the plan. At this point, the red line does not appear to equate to any physical feature on the ground.
3. Requirement 5.2 requires the removal of "*the hardstanding from the site frontage*" and the second reason for issuing the notice refers to "*the expansion to allow parking of coaches on the site frontage*".

Background

4. The planning history of the site includes 2 items of especial relevance. Firstly, planning permission, reference MH 98/0545, for change of use from disused barn for the parking of 4 coaches and 3 mini buses and day to day maintenance of the same vehicles, granted in August 1998. Condition 2 of this permission limited its duration to one year. Secondly, planning permission reference 99/00942FUL for use of land for parking public service vehicles and routine maintenance, granted on 12 August 1999. No limit was placed on the duration of this permission. Both permissions were based on the same plan which covered the site's access, the Dutch barn, and the eastern part of the yard. This hand drawn plan appears to exclude both the green hatched areas indicated on the enforcement notice plan.

Reasons

5. No appeal has been made on ground (f), but the appellants point out that no change of use has been alleged in the rear part of the site - I take this to mean the western part - nor has it been alleged that a hardstanding has been constructed here. It is further contended that the requirement to cease parking in this area is not linked to the allegation and, as such, is unnecessary and unjustified. Only the removal of the hardstanding at the front of the site - I take this to mean the eastern part of the site in the vicinity of the barn - is required. It is further pointed out that what is meant by "*frontage*" in the second requirement is not defined. And, it is submitted that it is not reasonable to regard the area to the south of the existing building as such, as it could not reasonably be regarded as frontage.
6. In my view, the concern outlined above is well-founded. In particular, there appears to be a disconnect between the allegation and requirement 5.1 in that while the allegation of change of use purports to apply to what is described as "*private grassed amenity area*", the requirement calls for the cessation of the use on part of the concrete surfaced yard. And, notwithstanding the second reason for issuing the notice referred to in paragraph 3 above, the Council's case on ground (a), under the heading 'Principle of the Expansion of the Business', states "*Expansion to the rear of the site also extends the parking areas to allow for parking and manoeuvring of coaches adjacent to the*

boundary with Lower Lightfoot Bungalow"¹. It may be that requirement 5.1 addresses this point, but to my mind it does not follow on logically from the alleged breach.

7. The appellants' concern also extends to the use of the term "*private grassed amenity area*". While there is a good deal of merit in the point made, I have a more fundamental concern, namely that this area - stated in the singular - is not expressly identified in the notice. The fact that requirement 5.1 identifies 2 green hatched areas imparts a good deal of confusion into the notice, perhaps all the more so when the second reason for issuing the notice is taken into account. At the site inspection, in response to a request from myself for the position of the 'hardstanding' referred to in the allegation to be identified, the Council's representative pointed to both the green hatched area in the eastern part of the site and the unconsolidated hard surfaced area in its western part. This interpretation may or may not have been correct, but given the manner in which the notice is drafted, this point is far from clear.
8. This lack of clarity also extends to the second requirement which only refers to the removal of the hardstanding from "*the site frontage*". This suggests that the notice does not attack the unconsolidated hard surfaced area in the western part of the site. But, a greater concern on my part is that just what is meant by "*frontage*" is not at all clear. Given that the hard surfaced area on the east side of the site extends well back from its boundary with Lightwood Lane, and runs alongside both sides of the former barn as well, I am inclined to agree with the appellants' view that the land between the south side of the building and the site's access cannot reasonably be regarded as "frontage". The same view applies to the strip of land between the north elevation of the former barn and the site's northern boundary.
9. The appellants make no claim that the notice is invalid. I am however, mindful of *Miller-Mead v Minister of Housing and Local Government* [1963] 1 All ER 459, and the 'test' for validity as stated by Upjohn LJ, namely "*does the notice tell the person [on whom it is served] fairly what he has done wrong and what he must do to remedy it?*" The circumstances of this case, and in particular the ambiguity, lack of clarity and precision inherent in the notice, are such that I find the answer to the question posed is "*no*". I have considered whether the deficiencies in the notice I have identified could be remedied by the exercise of my powers of correction, but in this instance I am not satisfied that this could be done without giving rise to injustice.

Overall Conclusion

10. For the reasons given above, and having regard to all the other matters raised, I conclude that the notice does not specify with sufficient clarity the alleged breach of planning control and the steps required for compliance. It is not open to me to correct the errors in accordance with section 176(1) (a) of the 1990 Act since injustice would be caused were I to do so. The notice is invalid and will be quashed. In these circumstances, the various grounds of appeal as set out in section 174(2) of the 1990 Act as amended, and the application deemed to have been made under section 177(5), do not fall to be considered.

¹ Council's statement of case: section 5.1.1, fifth paragraph.

Formal Decision

11. The enforcement notice is quashed.

D H Brier

Inspector