
Appeal Decision

Site visit made on 13 March 2018

by Sukie Tamplin DipTP Pg Dip Arch Cons IHBC MRTPI

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

Decision date: 19 March 2018

Appeal Ref: APP/X0360/C/17/3180612
34 Oxford Road, Wokingham, RG41 2XZ

- 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 Neil Moss against an enforcement notice issued by Wokingham Borough Council.
- The enforcement notice was issued on 21 June 2017.
- The breach of planning control as alleged in the notice is without planning permission the material change of use of the land from a tool and plant hire business to a mixed use of the land for the tool and plant hire business and motor vehicle hire, maintenance and repair business.
- The requirements of the notice are:
 - i) Cease the use of the land for motor vehicle hire, maintenance and repair in relation to the Go-kart business.
 - ii) Remove from the land all vehicles, Go-karts, trailers, machinery, tools, parts and containers associated with the unauthorised use.
- The period for compliance with the requirements is Three months.
- 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.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with variations

The Notice

1. The allegation refers to a mixed use including motor vehicle hire, maintenance and repair business. In turn the requirements of the Notice also refer to the activities as a "Go-kart business".
2. The appellant says that the vehicles subject of the Notice are not Go-karts but are "Formula 2 stock cars (fitted with silencers)". Notwithstanding the variation in this description there is no suggestion that the appellant does not understand the purpose of the Notice or the vehicles which are targeted. In these circumstances there would be no prejudice to any party if I vary the requirements to exclude the term go-karts so that the description is consistent.

Background and procedural matters

3. The appeal site is located on the corner of Oxford Road and Frederick Place and comprises a low single-storey building located to the rear of a large area of hardstanding. The premises have a long standing permission for the hire and sale of DIY tools, equipment and associated materials.

4. The main frontage of the site faces Frederick Place, a residential cul-de sac to the south of Oxford Road. To the north of Oxford Road are the station and various commercial premises.
5. On the day of my visit on a week-day lunchtime, I saw that there was a small removal van with vehicle ramps fitted to the tail gate parked on the left hand side of the forecourt. The van was in the same place as that shown in a photograph within the appellant's statement. It was also parked in the same place as is illustrated by the photographs attached to the Council's statement.
6. A window in the side of the van seemed to indicate that it was fitted out for overnight stays. A (Formula 2) stock car had been loaded into the van. Adjacent and between the van and the building there was a large trailer on which a second stock car had been secured. The trailer was also loaded with spare tyres and other vehicle parts. To the right hand side of the forecourt a third stock car was parked.
7. I revisited the site later the same day and saw that the trailer and stock car parked on the forecourt had been removed and the back of the removal van was secured shut. Whilst I acknowledge my visits were just 2 snap shots in time, on neither visit did there appear to be any signs of activity in connection with the hire of DIY tools and equipment.
8. The appellant considers that enforcement action is not proportionate in this case and his evidence says that the Council has not followed its own enforcement protocol or national guidance. However this is not a matter for my decision which must be determined in the context that a Notice has been issued and the appeal made on 2 grounds. There is no application for costs in connection with alleged unreasonable behaviour and thus my decision is made solely on the evidence and the grounds pleaded.

Reasons

Appeal on Ground (c)

9. In order to succeed on ground (c) the appellant must show, on the balance of probabilities, that the use of the site in connection with the hire of motor vehicles (stock cars) is not a breach of planning control. This could be because the works are not development, are incidental to the permitted use or because they have deemed or express planning permission.
10. Turning first to the legislative provisions, Section 55 of the Act¹ says that development includes the making of a material change of use of any building or other land. In this case it is therefore necessary to consider whether there has been a material change of use of the land and building. The appellant says that the use of the site in connection with stock cars does not require planning permission because it is incidental to the main business which is for tool and plant hire. The appellant also says that the vehicles remain on the appeal site Monday-Friday and are predominately raced on Saturday afternoons. They are used mainly by the appellant and his friends with only a small number being hired out. In terms of maintenance he says that this only takes place within the removal van and is very minor in nature. Thus the nub of his argument is that the use subject of the Notice is insignificant and does not materially affect the use of the site and buildings and so is not development.

¹ Town and Country Planning Act 1990 as amended

11. However the appellant does not provide any explanation why he considers the use is 'incidental' to his tool hire business. There is no planning definition of the term, 'incidental' but its common or dictionary meaning is generally accepted to be a use which is parasitic on the main use or one that is naturally likely to be attached to such a use. The appellant relies on a slightly different interpretation of the term 'incidental', and suggests that an incidental use is a use which is minor, casual or subordinate.
12. Whichever definition is preferred the evidence does not explain why or how stock car racing is an activity which would tend to be associated or subordinate to the hire of DIY equipment. In these circumstances, where there is no evidence of a functional link between the uses I find the argument that the use is incidental is not cogent.
13. I turn now to the second strand of the appellant's argument; this is that the use is minor and casual. His evidence is that the use just occurs on Saturdays and is limited to the transport of stock cars to and from events with limited maintenance on the appeal site. It is acknowledged that this use includes some hiring out of vehicles to others.
14. However the evidence submitted by the Council and residents in the area paints a different picture of the use. There are reports that work is done regularly on the stock cars on days other than Saturday and maintenance activity involves revving of engines and other noisy activities. Indeed given the activity on the site on the day of my visit, a Tuesday in March, most or all of which appeared to be solely concerned with the stock cars, I do not find the appellant's evidence that the use is either casual or minor persuasive. The appellant describes the activity as a hobby but this does not help his case as any such recreational activity would still have no link to the permitted tool hire. In short, on the balance of probabilities, I do not find that his evidence is convincing.
15. The UCO² says that the current use falls within Class A.1 Shops but use for a business for the hire of motor vehicles does not fall within any specified class and is therefore sui generis. Similarly maintenance, storage and hire of stock cars is also a sui generis use. Thus as a matter of fact the appeal site is in a mixed use and this mixed use is materially different from the permitted hire business.
16. Section 57(1) says that planning permission is required for any development of land. There is no evidence before me that planning permission has been granted or that the use benefits from deemed permission by reason of a development order or can be regarded as an incidental use.
17. By reason of Section 171A (1) of the Act the carrying out of development without the required planning permission constitutes a breach of planning control. Consequently the appeal on ground (c) fails.

Appeal on Ground (g)

18. The appellant says that 3 months is an insufficient period to find alternative commercial premises for the hire shop and searches on commercial website have not been fruitful. He also says that storing and maintaining the Formula 2

² The Town and Country Planning (Use Classes) Order 1987 as amended

stock cars on a domestic driveway would be likely to lead to a high number of complaints.

19. However the requirements do not seek a relocation of the tool hire shop and solely target the Formula 2 stock car activity on the appeal site. Consequently I give little weight to the suggested difficulties.
20. The evidence demonstrates that the use has caused disturbance to residential neighbours, including at anti-social hours, and this has adversely affected their quality of life. In these circumstances the proposed 3 month period is in the public interest but would also give the appellant time to relocate the cars and associated paraphernalia which are intrinsically mobile by their nature.
21. Consequently the appeal on Ground (g) does not succeed.

Formal decision

22. It is directed that the requirements in Section 5i) of the Notice is amended by the deletion of the words "in relation to the Go-kart business"; and

In Section 5ii) the deletion of the words "Go-karts"

23. Subject to these variations, the appeal is dismissed and the enforcement notice is upheld.

Sukie Tamplin

INSPECTOR