



Appeal Decision

Site visit made on 20 March 2018

by Roy Merrett BSc(Hons) DipTP MRTPI

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

Decision date: 27 April 2018

Appeal Ref: APP/C2741/C/17/3179132

Land known as Poppleton Garden Centre, Northfield Lane, Upper Poppleton, York YO26 6QF

- 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 James Edwards, Innovation Parking Solutions Ltd against an enforcement notice issued by City of York Council.
 - The enforcement notice was issued on 11 May 2017.
 - The breach of planning control as alleged in the notice is without planning permission, a material change of use of that part of the Land used as a car park in connection with the garden centre (car park shown hatched black on Plan A) to a mixed use for car parking in connection with the garden centre, the siting of a free standing canopy structure and two containers and use as a hand car wash and valeting facility.
 - The requirements of the notice are (i) permanently remove the unauthorised containers and the unauthorised free standing canopy structure from the Land, and (ii) permanently cease use of the Land: (a) as a hand car wash and valeting facility, and (b) for the siting of a freestanding canopy and (c) for the siting of storage containers.
 - The period for compliance with the requirements is within 2 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) and (g) of the Town and Country Planning Act 1990 as amended.
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Formal Decision

1. The enforcement notice is quashed.

Reasons

2. The notice relates to a change of use to mixed use of land. In such cases the notice should refer to all the components of the mixed use to enable the planning merits to be judged accordingly. The concept of a mixed use is two or more primary uses existing within the same planning unit or unit of occupation. One is not ancillary to the other although there may be ancillary uses associated with each primary use. It is important that the alleged breach of planning control is expressed correctly as the deemed planning application is derived from the description of the alleged breach of planning control.
3. The notice alleges a material change of use of part of the Land used as a car park in connection with the garden centre (the hatched area). However, the car park is clearly only ancillary to the garden centre use. In excluding reference to the primary use of the Land as a garden centre in the allegation, the description of the breach of planning control is therefore incorrect.

4. Furthermore the notice refers to “the siting of a free standing canopy structure and two containers” as part of the mixed use. No purpose for which these are used (and therefore no use of land) is specified in relation to these. If they are integral to another primary use then that use should be specified in both the alleged breach of planning control and the requirements of the notice if it is required to cease.
5. The Council has confirmed that one of the containers and the canopy is used in connection with the use of the Land as a hand car wash and valeting facility. However it has also confirmed in correspondence that a second container relates to use of the site for the storage and collection of clothes. The identification of this further primary use of the Land and the need for its inclusion in the allegation and requirements has only been made plain by the Council since the notice was issued. Moreover the Council has otherwise confirmed in its correspondence dated 23 March 2018 that there is a third primary use subsisting, namely the use as a garden centre. As it acknowledges, the car parking is ancillary to the garden centre and so the allegation would have to be significantly and materially changed to incorporate reference to two additional primary uses.
6. Whilst the Council states that it had referred in the notice to storage of containers on the site as a use of land, this failed to encapsulate the true nature of the primary use to which the storage was related, namely the collection and storage of clothing rather than the storage of the containers themselves. This means that the parties on whom the notice was served have not been provided with an opportunity to address this materially different breach of planning control, whether by bringing a different ground of appeal or otherwise. Indeed the appellant has confirmed in correspondence that the purpose of the enforcement notice has been understood as wanting to stop the car wash use and remove associated facilities. Accordingly I am unable to correct the notice without causing injustice to the appellant. This finding is without prejudice to the Council’s ability to issue a fresh notice having regard to Section 171B(4)(b) of the Act.
7. Because it is a question of the use of the Land, the location of those uses within the unit may change over time and it is important therefore not to simply focus on the unauthorised use(s) as occurring in one specific part of the planning unit. Accordingly the effect of granting planning permission for the alleged mixed use could be to permit those uses to occur at any location within the planning unit. This is not to say that conditions could not be used to restrict the location of one or more primary uses should this be deemed necessary. However these considerations do not overcome the injustice issue that I have identified above.

Conclusion

8. For the reasons given above I conclude that the enforcement notice does not specify with sufficient clarity the alleged breach of planning control. It is not open to me to correct the error in accordance with my powers under section 176(1) (a) of the 1990 Act as amended since injustice would be caused were I to do so. The enforcement notice is invalid and will be quashed. In these circumstances the appeal under grounds (a) and (g) as set out in section 174(2) of the 1990 Act as amended and the application for planning permission

deemed to have been made under section 177(5) of the 1990 Act as amended do not fall to be considered.

Roy Merrett

INSPECTOR