



Appeal Decision

Hearing Held on 21 May 2019

Site visit made on 21 May 2019

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 July 2019

Appeal Ref: APP/M1595/C/18/3198229

Part of the former police station site and compound at Gordon Road, Corringham, Essex SS17 7RD

- 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 Suknbir Dhanoia against an enforcement notice issued by Thurrock Borough Council.
 - The enforcement notice was issued on 21 February 2018.
 - The breach of planning control as alleged in the notice is without the benefit of planning permission, a material change of use of the land to stationing of storage containers which are rented out for storage (Use Class B8) with the additional stationing and use of commercial vehicles.
 - The requirements of the notice are:
 - (i) Cease the use of the land for the storage of containers.
 - (ii) Remove from the land all storage containers.
 - (iii) Remove from the land vehicles associated with the storage use.
 - The period for compliance with the requirements is one month.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c) and (f) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice be corrected by the deletion of the words in paragraph 3 of the notice and the substitution of the words "Without planning permission, the material change of use of the land for storage purposes (Use Class B8)" and varied by the deletion of the words in paragraph 5(i) of the notice and the substitution of the words "Cease the use of the land for storage purposes". Subject to these corrections and variations the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Procedural Matter

2. Neither the Council nor the appellant had received a copy of the representations made by a third party who lives opposite the appeal site. As such, copies of the letter were made for them and time was given to read it. Both parties confirmed that they had no additional comments to make in respect of the letter. This representation has been taken into account in this decision.

The Notice

3. An enforcement notice must enable every person who receives a copy to know exactly what, in the Council's view, constitutes the breach of planning control. In this case, the allegation is not clear as it is not known what "stationing" a vehicle means. At the Hearing the appellant explained that he placed shipping containers on the land and rented them out for storage use. He also stored vehicles on the site in the open. The Council confirmed these are the activities that they observed. I find that the notice could be corrected to deal with this matter, which would bring clarity to the notice, and would not cause injustice to either party. I will therefore correct the allegation to "without planning permission, the material change of use of the land for storage purposes (Use Class B8)" and I will deal with the appeal on the basis of this corrected allegation.

The ground (c) appeal

4. Under a ground (c) appeal the onus of proof is on the appellant to show that there has not been a breach of planning control. In this case the appellant submits that there has not been a material change of use as the former use of the site was as a police station, which is a sui generis use. This particular police station had a large compound which was used for the storage and transportation of vehicles associated with criminal activities as well as staff parking. The six garages on site were also used for forensic searches of vehicles involved in crimes. The appellant's use of the site is limited to the compound area; he does not use the two storey building on site. As he uses the compound, and the garages within it, for storage purposes, it is his view that there has been no development.
5. The concept of a material change of use is not defined in any statute or statutory instrument. It is a question of fact and degree in each case. For there to be a material change of use, there needs to be some significant difference in the character of the activities from what has gone on previously. When there are questions over whether there has been a material change of use amounting to development, it is necessary to ascertain the correct planning unit and the present and previous primary uses of the site. The leading case on the subject is *Burdle*¹. The tests for determining the planning unit laid down in that case start with the unit of occupation and turn on the concept of physical and functional separation.
6. The primary use of the site identified in the notice was as a police station and the main activities of the police station use took place in the building. The appellant states that there were between 30 to 40 people, comprising police officers and support staff, who worked in the building but the building was also used as a base for other police officers, neighbourhood officers, traffic wardens and CID officers. As part of the policing use, there were also ancillary activities that took place on site. These included the parking of staff cars in the compound, the parking of squad cars and the storage and inspection of cars seized in policing operations. In my view, the police station use took place over the whole site and was therefore one planning unit. The activities that took place in the compound were functionally part of and ancillary to the overall police station use. This use was, in my view, a sui generis use.

¹ *Burdle and Williams v SSE and New Forest DC* [1972] 1 WLR 1207

7. After the police station closed, the appellant acquired a lease for the whole site, comprising the building and the compound identified in the plan attached to the notice. He did not use the building and the primary use of the compound area became a storage use. It was not physically or functionally related to the use of the building on site as this was vacant. The storage use was also not ancillary to any other activity taking place on site. There is a significant difference in the character of the activities from what has gone on previously. The police station use took place over the whole of the site with the majority of the activity taking place in the building and the station was open 24/7, with ancillary storage taking place largely in the open. The new use is a primary storage use within the compound area only, that takes place during the day only, involves less coming and going and vehicle movements and with a lot of the storage taking place in the shipping containers.
8. In my view the appellant's use of the site has created a new planning unit, comprising only the compound area, with a new primary use. There has therefore been a material change of use amounting to development. For these reasons the appeal on grounds (c) fails.

The appeal on ground (a) and the deemed planning application

Main Issues

9. The main issues are the effect of the development on (i) the living conditions of neighbouring occupiers, having regard to noise and disturbance; and (ii) the safe and efficient operation of the highway network near the appeal site.

Reasons

Living conditions

10. The appeal site is situated on the corner of Gordon Road and an unnamed service road that provides access to a shoppers' car park, residential garages and a servicing area for a supermarket and some smaller shops. The site has an irregular shape and is bounded to the north east by the shoppers' car park, to the north by a park, to the north west by a block of three storey flats (Park House) and to the south west by Gordon Road, on the opposite side of which there are two storey houses. The nearest residents are those in the three storey flats, though there are also flats (Grover Walk) above the shops to the south east of the site. The Grover Walk flats are some distance from the site being separated from it by the service road and garages. The Park House flats appear to have windows to habitable rooms in both elevations directly overlooking the site.
11. It is not known when the police station closed. The initial complaint made to the Council in January 2018 alleged that 20 metal containers had been placed in the compound, vehicles were being broken up and someone was living on site. No mention was made of any out of hours use but after the Council investigated, it transpired that there was no one living on site and no work was being done on any vehicles.
12. However, there clearly was some noise and disturbance arising from the storage use taking place in the containers and the compound generally, which was noticeable to residents. When the site was used as a police station, all activities were regulated by one user, now the storage containers and garages are rented out to multiple users. The Council submit that consequently the

current use is less regulated but the appellant explained he is able to offer secure storage as clients using the site do not have the freedom to come and go as they please. Individuals do not have keys to the entrance gate, they must first telephone to arrange access. He submits that there is less coming and going compared to the police station use and clients tend to leave items stored for quite a while. Generally speaking, they do not require daily access. The example given was that of a builder storing tools, plant and equipment not used in between jobs.

13. I find there is some merit in the appellant's submissions. Compared to the police station use, activities only take place during the day. There is a degree of regulation even though there are a number of users. The Council confirm that no complaints have been made to their Environmental Health service regarding noise. The nature of the disturbance, other than when the containers first arrived and were craned onto the site, appears to be from loud voices and the noise created when opening/closing the container doors, as opposed to noise from vehicles parking/moving/engines idling/reversing beepers.
14. A local resident kept an informal log in February 2018 which showed the level of activity taking place on the site and the types of vehicles involved. This evidence was not disputed by the appellant. From this snapshot in the first fortnight of the month, just before the notice was issued, it is apparent that there was a vehicle movement most days. However, the evidence shows it was mostly one vehicle though on some days it was two. The Council submit most of the vehicles entering the site are heavy commercial vehicles, pick-up trucks and recovery trucks bringing in a single car. In my view, some of these vehicles would have been the same type as when the police station was in use, given the use made of the compound.
15. The Council though are concerned that the level of activity could change if there was a different owner who managed the site in a way that resulted in more comings and goings or if the current owner changes his set up. This is a realistic concern as the size of the compound means that there is the potential for more storage use to take place. In addition, I saw that the storage use has evolved from when the notice was issued. The appellant confirmed at the Hearing that initially he was not renting out the open area in the compound and was only storing about five or six of his own cars there. This was borne out by the Council's photographs of the site taken in January and February 2018. At my site visit though I saw there were now about a dozen vehicles (cars and vans) being stored in the open together with builders' materials, rubble and plant, a boat and an additional shipping container.
16. It is my view that at the time when the notice was issued the degree of noise and disturbance was intermittent and limited to when people were on site, which, according to the resident's log, was not that often. Subject to the imposition of appropriate conditions to control the level of use on site, it is therefore concluded that the development accords with Policy PMD1 of the Council's Local Development Framework (LDF²). This policy seeks to minimise pollution and development will not be permitted where it would cause unacceptable effects on the amenities of an area.

² Thurrock Local Development Framework, Core Strategy and Policies for Management of Development, Focused Review, consistency with National Planning Policy Framework, adopted January 2015.

Operation of the highway network

17. Both sides of the service road have restrictions on parking in the form of double yellow lines. Gordon Road forms part of a bus route and in the vicinity of the appeal site has a mini roundabout and a raised zebra crossing with hazard lines in between and on the approach to each feature. There is also a long area of perpendicular residents' parking opposite the appeal site on Gordon Road. Parking for large vehicles in the vicinity of the appeal site is therefore restricted.
18. The appellant states that users of the site have to pre-arrange access. It is my view therefore that tenants who drive to the site and arrive early would probably park in the surrounding area awaiting entry. Some tenants may choose to park in the shoppers' car park or in the small³ car parking area adjacent to the pedestrian entrance to the former police station. However, there is nowhere for larger vehicles to park. As I saw at my arrival to the site visit, such vehicles park on the pavement outside the vehicular entrance to the appeal site prior to entering the site, so as to avoid blocking the service road. The resident's log and third party comments also record that large vehicles associated with the storage use park on the pavement and on the double yellow lines prior to entering the site.
19. The appellant has not carried out a survey of vehicle movements to and from his site but his estimate was around 30 to 40 vehicle movements a day, though at the Hearing he said it was probably less, perhaps two movements a day per container plus his mechanic delivering/collecting cars. I also noted that other large vehicles make use of the service road to access the unloading areas for the shops and a third party mentions Morrisons, Saver and Domino delivery vehicles as examples.
20. On the basis of this information and from what I saw, it is my view that the safe and efficient operation of the highway is compromised by the inconsiderate parking of those entering the site, to the detriment of highway safety and the inconvenience of pedestrians. I have considered whether imposing a condition, which would require that the locked gates into the site are left open, would mitigate this harm. However, while this would avoid the need to park outside the site, it is unlikely to be acceptable to the appellant as he would not be able to provide a secure storage area. The development is therefore not in accordance with the National Planning Policy Framework, which requires that safe and suitable access to the site can be achieved for all users.
21. Although I have found that there was some harm to the living conditions of neighbouring occupiers, having regard to noise and disturbance, subject to the imposition of appropriate conditions the storage use could continue. However, the harm to the safe and efficient operation of the highway remains and therefore the appeal on ground (a) fails.

The ground (f) appeal

22. The appeal on ground (f) is that the requirements of the notice exceed what is necessary to achieve the purpose of the notice. The purposes of an enforcement notice are set out in section 173 of the 1990 Act and are to remedy the breach of planning control (s173(4)(a)) or to remedy injury to

³ It appears this space could accommodate 4 or 5 cars.

immunity (s173(4)(b)). In this case the notice requires the unauthorised use to cease and for the containers and vehicles associated with the storage use to be removed. The purpose of the notice must therefore be to remedy the breach of planning control.

23. The appellant submits a lesser step would be to reposition three of the storage containers away from the boundary with Park House. He also submits that the requirement to remove vehicles associated with the storage use is ambiguous as it implies all vehicles associated with storage should be removed.
24. Whilst the appellant's lesser step might be appropriate if the reason for issuing the notice was because of injury to amenity, that is not the case here, where the purpose of the notice is to remedy the breach of planning control. The breach of planning control is the action of placing the storage containers on the land and using the land for storage purposes. Repositioning three of the storage containers would not undo that initial action and would not address all of the harm caused by the development, as set out in the reasons for issuing the notice. There is also no ambiguity about requiring the removal of vehicles associated with the storage use given my finding on the ground (c) appeal.
25. I therefore find that the steps required by the notice do not exceed what is necessary to remedy the harm caused and the appeal on ground (f) fails.
26. It is however necessary to vary the requirements of the notice following the correction made to the allegation. The notice will therefore be varied to require the cessation of the use of the land for storage purposes.

Conclusion

27. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and variations and refuse to grant planning permission on the deemed application.

D Fleming

INSPECTOR

