



Appeal Decision

Site visit made on 16 July 2019

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 August 2019

Appeal Ref: APP/M2372/C/18/3218832

Land at 4 Ranken Drive, Hoddlesden, Darwen BB3 3LT

- 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 Peter Heaton against an enforcement notice issued by Blackburn with Darwen Borough Council.
 - The enforcement notice was issued on 23 November 2018.
 - The breach of planning control as alleged in the notice is, without planning permission, the material change of use of the land from a residential (C3) use to a mixed use comprising of a residential (C3) use and a (B8) use by virtue of the storage of large industrial vehicles diggers, tipper trucks and small tractor with associated attachments, excessive to the needs of a dwelling.
 - The requirements of the notice are to cease using the land for the storage of industrial vehicles/machinery which are not incidental to the permitted use of the land as a dwelling house and remove the vehicles detailed and shown on the photographs embedded within the notice.
 - The period for compliance with the requirements is 2 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (f) of the Town and Country Planning Act 1990 as amended.
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Summary Decision: the appeal is dismissed and the enforcement notice is upheld as corrected and varied

Procedural matters

1. The breach of planning control as alleged in paragraph 3 of the notice is, without planning permission, the material change of use of the land from a residential (C3) use to a mixed use comprising of a residential (C3) use and a (B8) use by virtue of the storage of large industrial vehicles diggers, tipper trucks and small tractor with associated attachments, excessive to the needs of a dwelling. The requirements set out in paragraph 5 of the notice are, in summary, to cease using the land for the storage of industrial vehicles/machinery. The latter is, in effect, an abbreviated version of the full list of items cited in paragraph 3 of the notice. There is, therefore, a discrepancy between the breach of planning control alleged in the notice and the requirements to comply with it.
2. Notwithstanding this minor discrepancy, it is apparent that the appellant has understood the notice. Nevertheless, it is important that an enforcement notice is internally consistent. In the interests of both consistency and clarity, I shall therefore vary the requirements of the notice to refer to the full list of vehicles/machinery set out in the allegation at paragraph 3 of the notice. I am satisfied that no injustice would be caused by so doing.

3. I will also take the opportunity to delete the word 'large' that appears before the word 'industrial' in the allegation at paragraph 3 of the notice. The adjective 'large' is subjective and deleting it will not alter the meaning or substance of the allegation. I will also insert what appears to be a missing comma between the words 'vehicles' and 'diggers' in that paragraph. I am satisfied that the notice can be corrected in these respects without causing injustice.
4. The appeal was initially submitted only on ground (f) as set out in section 174(2) of the Town and Country Planning Act 1990 (the 1990 Act). However, on my reading, some aspects of the appellant's appeal on that ground should be more properly read as constituting an appeal on ground (b): that, in respect of any breach of planning control that may be constituted by the matters stated in the notice, those matters have not occurred. I therefore propose to consider those points as an appeal on ground (b). The Council has taken the opportunity to comment on the initial grounds of appeal in its own appeal statement, and has also commented on those grounds as expanded upon in the appellant's statement at Final Comments stage. I am therefore satisfied that the Council would not be prejudiced by considering the appeal on ground (b).
5. I am aware that the occupiers of a number of the residential properties close to the appeal site have made representations on this appeal, objecting to the breach of planning control for reasons that include visual intrusion and noise disturbance. However, the appeal is proceeding on grounds (b) and (f) as set out in section 174(2) of the 1990 Act. In those circumstances, the planning merits of the development are not before me and, whilst I have read all the representations made by local residents and understand the concerns expressed therein, I have not taken those objections into account in reaching my decision.

The appeal on ground (b)

6. The essence of the appellant's appeal on this ground is that the machinery is required to complete drainage works required as part of the refurbishment of the property. In his appeal statement, the appellant has set out in some detail the background to the refurbishment of the property, including the need for the drainage works. The appellant has also explained that the amount of time he can devote to the refurbishment of the property is limited due to other commitments.
7. Nevertheless, I have no evidence before me that the various pieces of machinery itemised in the alleged breach of planning control in the notice are actually being used in connection with the refurbishment of the property. At the time of my unaccompanied site visit, a substantial quantity of building materials was stored at the front of the premises. This would, I acknowledge, indicate that works on the property are in progress.
8. From the public highway, the only machinery visible was one digger in the front garden of the property and a rusty skip at the side of the property. The former was not in use and was surrounded by building materials and other paraphernalia. It therefore had the appearance of having not been used for some time. Whilst the latter may have contained some material associated with the refurbishment of the property, did not appear to contain material associated with excavation as part of drainage works as claimed and also had the appearance of having been in situ for a considerable period of time.

9. The appellant explains that some of the machinery referred to in the notice, including the trailer and the forklift truck have been moved to the rear of the property. There may indeed have been other machinery stored at the rear of the property at the time of my site visit which was not visible from the public highway. However, the obvious corollary of the appellant's explanation is that the machinery was not being actively used in the refurbishment of the property at that time.
10. Consequently, as a matter of fact and degree, I conclude that the digger and skip present at the time of my site visit were not actively being used for purposes associated with the refurbishment of the property. Rather, as alleged in the notice, I conclude that the digger and the skip were being stored on the land. It is also apparent from photographs attached to the notice and contained in the appellant's own statement that the other machinery referred to the notice was present on the site at some point and indeed may well have been present on the site at the time of my visit, albeit out of view from the public highway. I therefore conclude that, on the balance of probability, the breach of planning control constituted by the matters stated in the notice has occurred.
11. Accordingly, the appeal on ground (b) fails.

The appeal on ground (f)

12. The appeal on ground (f) is that the requirements of the notice exceed what is necessary. When an appeal is made on ground (f), it is essential to understand the purpose of the notice. Section 173(4) of the Town and Country Planning Act 1990 sets out the purposes which an enforcement notice may seek to achieve, either wholly or in part. These purposes are, in summary, (a) the remedying of the breach of planning control by discontinuing any use of the land or by restoring the land to its condition before the breach took place or (b) remedying any injury to amenity which has been caused by the breach. In this case, the requirements of notice, as I propose to vary them, are to cease the use (B8) use by virtue of the storage of industrial vehicles, diggers, tipper trucks and small tractor with associated attachments. The purpose of the notice must therefore be to remedy the breach of planning control that has taken place.
13. As indicated above, the appellant has explained that some of the vehicles/machinery referred to in the notice has been moved to the rear of the property. However, moving vehicles/machinery around the site does not achieve the purpose of the notice: it merely perpetuates the storage use in a different position on the land. I consider that the purpose of the notice can only be achieved by ceasing the use of the land for the storage of industrial vehicles/machinery and completely removing those vehicles/machinery from the land.
14. I conclude that the steps required by the notice are necessary to achieve the purpose of the notice and are therefore not excessive. Accordingly, the appeal on ground (f) fails.

Conclusion

15. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and variations.

Formal Decision

16. It is directed that the notice be corrected by:

- deleting the word 'large' that appears before the word 'industrial' in the allegation at paragraph 3 of the notice
- inserting a comma between the words 'vehicles' and 'diggers' in paragraph 3 of the notice.

17. It is directed that the notice be varied by:

- deleting the requirements at paragraph 5 of the notice and replacing them with "to cease using the land for the storage of industrial vehicles/machinery which are not incidental to the permitted use of the land as a dwelling house, comprising the storage of industrial vehicles, diggers, tipper trucks and small tractor with associated attachments, and remove the vehicles/machinery detailed and shown on the photographs Fig 1 to Fig 6 inclusive embedded within the notice."

18. Subject to those corrections and variation, the appeal is dismissed and the enforcement notice is upheld.

Paul Freer
INSPECTOR