



Appeal Decisions

Site visit made on 2 September 2019

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

an Inspector appointed by the Secretary of State

Decision date: 03 October 2019

Appeal A: APP/W3005/C/19/3223119

Land at High Street, Hucknall, Nottingham

- 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 Land and Securities Limited against an enforcement notice issued by Ashfield District Council.
 - The enforcement notice was issued on 24 January 2019.
 - The breach of planning control alleged in the notice is failure to comply with condition No 3 of a planning permission Ref: V/2016/0739 granted on 27 January 2017.
 - The development to which the permission relates is retention of existing car park and new vehicular access. The condition in question is No 3 which states that: vehicular access to the site shall be gained off Torkard Way only. The notice alleges that the condition has not been complied with in that vehicular access to the site is gained off High Street.
 - The requirements of the notice are:
 1. Cease the use of the vehicular access shown hatched in green on the attached plan ADC2 onto the High Street for users of the car park shown hatched in red on plan ADC2
 2. Install the lockable gate at the existing entrance to the Land using the detail approved under ref: V/2016/0739 and as shown on the approved plan, attached to this notice and marked as ADC3
 - The period for compliance with the requirements is 1 month.
 - The appeal is proceeding on the grounds set out in section 174(2) (b) and (c) of the Town and Country Planning Act 1990 as amended (the 1990 Act).
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Appeal B: APP/W3005/C/19/3222862

Land at High Street, Hucknall, Nottingham

- 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 Nick McEnery of Uptown Property Developments Ltd against an enforcement notice issued by Ashfield District Council.
- The enforcement notice was issued on 24 January 2019.
- The breach of planning control alleged in the notice is failure to comply with condition No 3 of a planning permission Ref: V/2016/0739 granted on 27 January 2017.
- The development to which the permission relates is retention of existing car park and new vehicular access. The condition in question is No 3 which states that: vehicular access to the site shall be gained off Torkard Way only. The notice alleges that the condition has not been complied with in that vehicular access to the site is gained off High Street.
- The requirements of the notice are:
 1. Cease the use of the vehicular access shown hatched in green on the attached plan ADC2 onto the High Street for users of the car park shown hatched in red on plan ADC2

2. Install the lockable gate at the existing entrance to the Land using the detail approved under ref: V/2016/0739 and as shown on the approved plan, attached to this notice and marked as ADC3
 - The period for compliance with the requirements is 1 month.
 - The appeal is proceeding on the grounds set out in section 174(2) (b) and (e) of the Town and Country Planning Act 1990 as amended (the 1990 Act).
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Formal Decisions

Appeal A

1. The appeal is allowed and the enforcement notice is quashed.

Appeal B

2. The appeal is dismissed.

Preliminary Matter

3. Even though, the 2 appeals have been submitted separately by different appellants they both relate to the same enforcement notice. As such, to avoid duplication I have dealt with them together, except where otherwise indicated.

Appeal B - ground (e) appeal

4. Section 172(2) of the 1990 Act requires an enforcement notice to be served on the owner and the occupier of the land to which it relates and on any other person having an interest in the land, being an interest which, in the opinion of the authority, is materially affected by the notice.
5. I acknowledge that the appellant in this appeal does not consider that he should have been served with a copy of the enforcement notice as he only owns the access hatched green on the plan ADC2. However, as he does own part of the site covered by the enforcement notice the Council have complied with section 172(2) of the 1990 Act by serving a copy of the enforcement notice on him. Consequently, the appeal on ground (e) fails.

Appeals A & B - ground (b)

6. Ground (b) is that those matters mentioned in the alleged breach have not occurred. It appears that the appellant for Appeal B does not operate the car park that is within the land covered by the enforcement notice. However, as a matter of fact and degree there is no dispute that the appeal site has been used as a car park and on this basis the appeal on ground (b) fails.

Appeal A - ground (c)

7. An appeal on this ground is that there has not been a breach of planning control. The appellants' case is that the planning permission that is the subject of the enforcement notice has not been implemented therefore condition No 3 of that permission is not applicable and cannot be breached.
8. Planning consent was granted in 1990 for an extension to a carpark off Station Road. The appeal site forms part of the land that is shown hatched on the plan attached to the 1990 planning permission. Condition No 4 of that permission is that vehicular access to the site shall be gained off Station Road only. The appeal site appears to have been used as part of that carpark for a considerable time.

9. At some stage the inner relief road, Torkard Way, was constructed which effectively severed the car park from Station Road and reduced it in size. However, there was no material change in use in so far as it relates to the area of land identified on the enforcement notice. The evidence before me indicates that an enforcement notice directed at a breach of condition of condition No 4 of the 1990 permission was served in June 2016 as vehicular access to the car park was being gained from High Street.
10. The Council considers that the requirements of that enforcement notice have been superseded by planning permission V/2016/0739 (the 2017 permission). The description of development on the Council's Approval Notice for that permission is retention of existing car park and new vehicular access. However, the description of the proposed development on the associated planning application form is for a new access to the existing SIP car park. The appellants consider that planning permission was not required for the retention of the use of the appeal site as a car park due to the 1990 planning consent. I agree that whilst the amended description offers some explanation that the car park will be retained, that of itself is not development as no material change of use was proposed. The 2017 permission is therefore for the new access.
11. There is no dispute that the use of the land as a car park was first implemented as part of the 1990 permission. The 2017 permission, and the conditions therein, only becomes effective if and when it is implemented.
12. The appellant as an owner of the land and recipient of the 2017 permission had the choice after that permission was granted to; implement that permission; discontinue the use as a car park; or to continue the use of the site as a car park without implementing the 2017 permission albeit subject to the risk of further enforcement action or prosecution associated with the breach of condition relating to the 1990 permission.
13. In this case, whilst the Council have stated that the car park has been modified the approved plans associated with the 2017 permission contain very little detail and only indicate the position and design of the new vehicular access to Torkard Way. This access has not been constructed and I observed that there is fencing across the northern boundary of the appeal site. Moreover, the land between the appeal site and Torkard Way is not owned by the appellant. As such, without access across that land it would be reasonable to consider that the appellant has chosen to continue the use of the site without implementing the 2017 permission. Consequently, I consider that on the balance of probabilities that the 2017 permission has not been implemented. It follows that matters alleged in the enforcement notice do not constitute a breach of planning control and the appeal on ground (c) succeeds.

Conclusions

Appeal A

14. For the reasons given above, taking into account all other matters raised, I conclude that the appeal should succeed on ground (c). Accordingly, the enforcement notice will be quashed.

Appeal B

15. For the reasons given above in relation to grounds (e) and (b), I conclude that the appeal should not succeed. However, the notice will not be upheld as a

consequence of my decision to allow Appeal A on ground (c) and quash the Notice.

D. Boffin

INSPECTOR