



Appeal Decision

Site visit made on 27 January 2020

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 6 March 2020

March 2020

Appeal Ref: APP/F4410/C/19/3235025

Land off Bankwood Lane, Rossington, Doncaster DN11 0PS

- 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 Eliezer Halpern against an enforcement notice issued by Doncaster Metropolitan Borough Council.
- The enforcement notice was issued on 1 July 2019.
- The breach of planning control as alleged in the notice is *Without the benefit of planning permission, the material change of use of the Land from general industry (B2 use class) to Sui Generis for the parking of vehicles (including heavy goods vehicles) which are not associated with the general industry B2 use.*
- The requirements of the notice are (i) *Cease the use of the Land for the parking of vehicles (including heavy goods vehicles) which are not associated with the lawful use of the Land as general industry (B2 Use Class); and (ii) Permanently remove all vehicles (including heavy goods vehicles) from the Land other than those associated with the lawful use of the Land as general industry (B2 Use Class).*
- The period for compliance with the requirements is 30 days.
- The appeal is proceeding on the ground set out in section 174(2)(c) of the Town and Country Planning Act 1990 as amended.

Decision

1. The appeal is dismissed and the enforcement notice upheld with corrections.

Preliminary Matters

2. A temporary planning permission was granted on 14 December 2018 under reference 16/02386/COUM for the use of the appeal site for HGV parking, subject to conditions including no 1 providing that the development should cease and the land be restored after 6 months. The application was made retrospectively. This permitted use is not materially different from the use alleged in the notice and, having consulted with the parties, I consider that the breach of planning control is the failure to comply with that condition. I shall correct paragraph 3 of the notice accordingly.
3. The appellant points to the merits of the use, but no appeal is made on ground (a) seeking planning permission. Therefore the merits of the alleged development are not before me for consideration.
4. No representative of the appellant attended the site visit. I obtained a clear view of the site from the surrounding footways and proceeded to view the site from public vantage points unaccompanied.

The appeal on ground (c)

5. For an appeal on ground (c) to succeed, it must be shown that the matters alleged in the notice, if they occurred, do not constitute a breach of planning control. Here, the appellant contends that the property has been an industrial site for many years and therefore has an existing use which would allow for vehicles, including HGVs, to be parked on the land.
6. The site was for sale and clear of vehicles at the time of my visit, and the Council describes the notice as having been complied with. A notice recently affixed to the site fencing, given by the Council pursuant to section 77 of the Criminal Justice and Public Order Act 1994 and ordering the removal of several touring caravans and vehicles, described the site as 'Former Coats Viyella Clothing'. This is consistent with the Council's description of the site as a clothing factory that has been demolished, and with the appellant's description of an industrial site.
7. The last lawful use of the site, other than the temporary HGV parking permission, was as a general industrial B2 use, although the factory building has been demolished. The parties have not addressed the consequences for the lawful use of the site resulting from the demolition of the building that facilitated it. Historic aerial photographs show that there were some vehicle parking spaces laid out in association with the factory.
8. However it is not disputed that, at the time the notice was issued, the site was being used for the parking of vehicles as a stand-alone use of the site, said by the parties to be in connection with a nearby business. The 1987 Town and Country Planning (Use Classes) Order defines a Class B2 use as one for the carrying on of an industrial process. Use of the land for parking involving no industrial process is not a Class B2 use, and there is no existing Class B2 use of the site to which the parking is or could be ancillary. The stand-alone use of the site for parking is materially different from the use as a factory and the ancillary parking use by staff, visitors and delivery vehicles that may have been associated with it, not least by taking up a large area of ground previously covered by the factory building.
9. The requirement of condition no 1 is to cease the use of the land for the parking of HGVs and it follows that the continued use for that purpose at the time of issuing the notice amounted to a breach of planning control. Therefore the appeal on ground (c) fails. Although the notice has now been complied with, it is nonetheless necessary to uphold it, given its continuing effect against subsequent development pursuant to s. 181 of the 1990 Act.
10. The requirements in paragraph 5 of the notice refer to the parking of vehicles that may be associated with the lawful use of the Land as general industry (B2 Use Class). As the only use taking place on the site at the time the notice was issued was the unauthorised use for parking, I shall vary the requirements to delete reference to the stated lawful B2 use, and simply require that the use shall cease and the vehicles shall be removed.

Formal Decision

11. It is directed that the enforcement notice be corrected by:
 - (i) The deletion of "Section 171A(1)(a)" and its substitution by "Section 171A(1)(b)" in paragraph 1; and

- (ii) The deletion of the text from paragraph 3 and its substitution by "The failure to comply with condition 1 of planning permission 16/02386/COUM dated 14 December 2018. The permission was for the "Temporary change of use from former factory and factory outlet to HGV parking for a period of 8 months (Retrospective) (amended description)". Condition 1 stated 'The development hereby permitted shall be for a limited period being the period of 6 months from the date of this decision. At the end of this period, the development hereby permitted shall cease and the land restored in accordance with a scheme previously submitted to and approved in writing by the Local Planning Authority'. The condition has not been complied with in that the use of the Land for parking has continued beyond the limited period permitted."

12. It is directed that the enforcement notice be varied by:

- (i) Deleting, from paragraph 5(i), the words "which are not associated with the lawful use of the Land as general industry (B2 Use Class)"; and
- (ii) Deleting, from paragraph 5(ii), the words "other than those associated with the lawful use of the Land as general industry (B2 Use Class)".

13. Subject to those corrections and variations the appeal is dismissed and the enforcement notice is upheld.

Laura Renaudon

INSPECTOR