



Appeal Decision

Site visit made on 2 June 2020

by M Madge DipTP, MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 June 2020

Appeal Ref: APP/J4525/C/19/3241055

Land at former Fox and Hounds Public House, North Road, Hetton le Hole, Houghton le Spring, Co Durham DH5 9JT

- 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 Gabriel Enache against an enforcement notice issued by Sunderland City Council.
 - The enforcement notice was issued on 14 October 2019.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the land from public house car park to use for the operation of a hand car wash and valeting business.
 - The requirements of the notice are:
 - (i) Cease the use of the land for the washing, cleaning and valeting of vehicles.
 - (ii) Remove from the land all plant and equipment, advertisement signage, tools, materials and consumables associated with the car wash and valeting use.
 - (iii) Remove any waste items and materials from the land.
 - The period for compliance with the requirements is six calendar months.
 - The appeal is proceeding on the grounds set out in sections 174(2)(f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice be varied by the deletion of Paragraph 5(iii) and by deleting "materials and consumables" and the substitution therefore of by "materials, consumables, litter and waste" in Paragraph 5(ii). Subject to these variations the appeal is dismissed and the enforcement notice is upheld.

Preliminary matter

2. The notice is required to specify the precise boundaries of the land to which it relates, whether by reference to a plan or otherwise¹. The land to which this notice relates is clearly identified in Paragraph 2 of the notice and the area from which the car wash and valeting use is being operated falls within the land edged red on the plan.

Ground (f)

3. Having regard to the requirements of the notice, set out in Paragraph 5 of the notice, its purpose is to remedy the breach of planning control. To succeed on ground (f), the appellant must show that the requirements of the notice exceed what is necessary to remedy that breach.

¹ Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002, Regulation 4(c)

4. The grounds of appeal suggest that part of the appeal site is leased to another business and that Paragraph 5(iii) is generic and applicable to the whole site. The appellant should not therefore be required to remove waste items and materials from all of the land or that do not relate to the car wash and valeting use.
5. The Council confirm that Paragraph 5(ii) focusses on the removal of the plant, equipment, materials and consumables associated with the car wash and valeting use. Whereas, Paragraph 5(iii) was only intended to relate to securing the removal of litter and waste items associated with the car wash and valeting use. The Council agree that the wording of 5(iii) is somewhat generic and suggest that, ultimately, the landowner can be required to undertake the steps specified in the notice.
6. The requirements of the notice in respect of Paragraphs 5(i) and 5(ii) are explicit in their relevance to the car wash and valeting use only. Paragraph 5(iii) however refers to the land, which goes beyond the area that I saw being used for the operation of the car wash and valeting use. Furthermore, compliance with 5(iii) would include the removal of litter and waste not necessarily resulting from the breach.
7. Given the imprecise nature of the wording, I find that Paragraph 5(iii) should be deleted, and, for clarity, Paragraph 5(ii) should be varied to include the removal of litter and waste. Given the minor nature of these variations, they would not be any more onerous than those first issued, and no injustice would be caused. Accordingly, the appeal on ground (f) succeeds in so far as the notice is varied.

Ground (g)

8. Compliance with the notice would not require any complex operations. The appellant, however, has advised that they are in dialogue with the Council in respect of submitting a further planning application, which would be accompanied by a noise assessment. Given the potential for delays in the preparation of the noise assessment, due to adverse weather conditions, and the lack of control over the application determination period, the appellant seeks to increase the compliance period to 12 months.
9. The Council has previously determined an application pertaining to this development and as such the determination of any resubmission application should be straight forward and timely. I find that the 6 months period afforded by the notice does not fall short of what is reasonable to allow the noise assessment to be produced and for the application to be determined. On this basis, the appeal fails on ground (g).

Conclusions

10. For the reasons given above, I conclude that the requirements are excessive and I am varying the enforcement notice accordingly, prior to upholding it. The appeal on ground (f) succeeds to that extent.

M Madge

INSPECTOR