



Appeal Decision

Site visit made on 30 June 2020

by N Thomas MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 July 2020

Appeal Ref: APP/L3815/C/19/3236475

Land at Kellys Farm, Bell Lane, Birdham, Chichester, West Sussex PO20 7HY

- 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 Paul Knappett against an enforcement notice issued by Chichester District Council.
 - The enforcement notice, numbered BI/46, was issued on 31 July 2019.
 - The breach of planning control as alleged in the notice is without planning permission the material change of use of the land to use as a car wash business.
 - The requirements of the notice are:
 - (i) Discontinue the use of the land as a car wash business;
 - (ii) Remove the cleaning equipment relating to the use, from the land;
 - (iii) Break up the area of hardstanding in the approximate location shown on the attached plan and remove the resulting debris from the land; and
 - (iv) Following the completion of step (iii) re-grade the land to match the profile of the adjoining land to the south.
 - The period for compliance with the requirements is:
 - Steps (i) and (ii) - one month;
 - Steps (iii) and (iv) - two months.
 - The appeal is proceeding on the grounds set out in section 174(2) (c) and (f) of the Town and Country Planning Act 1990 as amended.
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Decision

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

Preliminary Matters

2. An Enforcement Notice was served in December 2017 on land adjacent to but separate from the appeal site. An appeal¹ was lodged and the notice was upheld with corrections, clarifying the area of land affected and correcting the breach to specify the material change of use of the land to use as a car wash business.
3. The car wash business use has subsequently been relocated to an area of hardstanding with a cut-off drain on an adjacent area of land to the front of the site. The rest of the area is surfaced with gravel and is used for parking cars. It is this area that is the subject of the current appeal.

¹ Ref APP/L3815/C/18/3193453

4. The appellant has raised the lawfulness of the hardstanding in relation to the appeal on ground (f), but this is more appropriately considered under ground (c) as it relates to whether the works benefit from planning permission².

The ground (c) appeal

5. This ground of appeal is that the matters stated in the notice which give rise to the alleged breach of planning control, did not constitute a breach of planning control. The burden of proof is on the appellant to make out his case. The planning merits of the development are not relevant considerations. The concept of a material change of use is not defined in statute or statutory instrument and therefore it is a question of fact and degree in each case.
6. The appellant's case is that the car wash business is incidental to the primary and lawful use of the land as a car park, which he asserts has been used as such for 30 years, and therefore there has been no material change of use.
7. I have seen no firm evidence that the land has a separate primary use as a car park. The evidence indicates that it has provided car parking ancillary to another use of the wider site, such as the former nursery, and the planning history indicates that the area was to provide car parking for a farm shop pursuant to a permission in 2008, although the farm shop has not been built. Although at the time of my visit the area was closed and there was no car washing taking place, there is a dedicated car wash area with a concrete surface and a cut-off drain to one side of the site. The Council's evidence indicates machinery and equipment being used to wash cars on the hardstanding. The car washing is advertised on the roadside, and is therefore specifically designed to draw customers to the car wash business. These factors point towards the car wash business being a freestanding business, rather than being incidental or ancillary to the use of the land for parking cars.
8. A separate use of the land for a car wash business has resulted in additional activity from the vehicles entering and leaving the site to be cleaned, as well as effects such as noise and spray from the use of the car washing and cleaning equipment. Whether or not the equipment is stored on the site or brought to the site every day, the use of the site for car washing has resulted in a material change in the character of the use of the land.
9. I note that a sign is displayed within the car park stating that the car wash business is incidental to the main reason why the cars are in the car park. However, for the reasons set out above I am not satisfied that the car washing activity is incidental or ancillary to the car parking.
10. The appellant draws a distinction between the terms 'incidental' and 'ancillary' in describing the relationship between the car wash business and the car park, and concludes that the use is incidental rather than ancillary. However, in this context the terms are generally interchangeable. Both terms refer to a use or activity that would not be expected to be found as an integral part of a use, but which are not primary uses in their own right.
11. In terms of the hardstanding, the appellant argues that it was built following the permission granted in 2008 for a farm shop and that it therefore benefits from planning permission. However, the Council asserts that the 2008 permission has not been implemented as pre-commencement conditions were

² Under application ref BI/08/01690/FUL

not discharged and that it has now lapsed. The appellant disputes this view, but I have seen no firm evidence that the permission has been implemented in accordance with the conditions, nor that the hardstanding was part of the permission. The appellant has not discharged the burden of proof in this regard and I am not satisfied that the hardstanding is lawful.

12. The introduction of the car wash business on the concrete hardstanding has resulted in the creation of a separate planning unit in a single primary use. That use, which has resulted in a material change in character, amounts to a material change in the use of the land, as a matter of fact and degree. This requires planning permission, and a breach of planning control has therefore occurred. The appeal on ground (c) fails.

The ground (f) appeal

13. This ground of appeal is that the steps required by the notice to be taken exceed what is necessary to remedy any breach of planning control or to remedy any injury to amenity. In this case the steps seek to remedy the breach of planning control.
14. The appellant argues that it is excessive for the notice to require the removal of the hardstanding and to require the land to be re-graded to match the land to the south. It is well established that it is not excessive to require works which facilitate a use to be removed in order to remedy the breach of planning control by restoring the land to its condition before the breach took place. The hardstanding with integral drainage facilitates the car wash business use and the appellant has not established that the hardstanding is lawful. Following the removal of the hardstanding, the land will need to be re-graded to match the level of the gravelled area to the south, and the appellant states that the gravel was in place prior to the laying of the hardstanding. I do not agree therefore that the requirements are excessive.
15. The appeal on ground (f) fails.

N Thomas

INSPECTOR