
Appeal Decisions

Site visit made on 16 June 2020

by AJ Steen BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 July 2020

Appeal A Ref: APP/D1590/C/19/3237855

Appeal B Ref: APP/D1590/C/19/3237856

Appeal C Ref: APP/D1590/C/19/3237857

28 Stock Road, Southend-On-Sea, Essex SS2 5QF

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- Appeal A is made by Mr David Hardy, appeal B is made by Mrs Lynne Betts and appeal C is made by Mr Michael Hardy against an enforcement notice issued by Southend-On-Sea Borough Council.
- The enforcement notice was issued on 29 August 2019.
- The breach of planning control as alleged in the notice is without planning permission, the unauthorised change of use of the land from coachworks (Class B1) to aggregate handling (Class B2).
- The requirement of the notice is to cease the unauthorised use of the land for aggregate handling.
- The period for compliance with the requirements is 4 months.
- The appeals are proceeding on the ground set out in section 174(2)(g) of the Town and Country Planning Act 1990 as amended (the Act). Appeal A is also proceeding on the ground set out in section 174(2)(a) of the Act. Since the prescribed fee on appeal A has been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act also falls to be considered.

Summary Decision: The appeals are dismissed and the enforcement notice is upheld with a variation in the terms set out below in the Formal Decision.

Preliminary Matters

1. Due to the situation regarding Covid-19, I altered the site visit plans such that it was an access required site visit without the Council present. I was able to see around the yard while it was operating. I was also able to see the nearby yard at 25 Stock Road and visited Thornford Gardens.

The Appeal on Ground (a) and the Deemed Planning Application

Main issue

2. The effect of the use of the land for aggregate handling on the living and working conditions of neighbouring occupiers of dwellings in Thornford Gardens and other commercial premises in Stock Road and Potters Way with particular regard to dust pollution and noise disturbance.

Reasons

3. 28 Stock Road is located on a substantial industrial estate that comprises a mix of uses including offices, small industrial units, waste disposal and processing

units, and concrete plants. Opposite the premises is a cemetery and to the rear are mature trees and a small open area with the railway and houses on Thornford Gardens beyond.

4. No. 28 operates as an aggregate handling yard, with deliveries of inert material, some of which is cleaned or screened on the site before it is collected for delivery. Processing on site takes place using screening and cleaning machines and large heavy plant used to move materials around and unload and load lorries. There are tall walls around most of the yard and dust suppression measures have been installed that were operating during my visit. These primarily comprise a moist air system including water sprayed over most of the yard to reduce dust emissions.
5. Dust arising from operations within the yard has the potential to travel into neighbouring premises and, potentially, the houses in Thornford Gardens. It is likely that the suppression systems installed reduce this to some extent. Nevertheless, limited evidence has been provided of the effectiveness of that system. I understand that some monitoring has taken place but is not yet complete. It is possible this would demonstrate that the suppression systems overcome the harm to surrounding occupiers. However, such evidence is not yet available.
6. Movement of vehicles and heavy plant around the site results in significant noise arising. I understand that acoustic surveys have previously taken place, but that these did not fully take into account the effect of the use of both 25 and 28 Stock Road for handling of aggregate. It appears that handling of aggregate has ceased from the other yard at 25 Stock Road, although it is unclear whether that could recommence in the future. On the basis of the evidence provided, I consider that noise arising from the use harms the living and working conditions of nearby occupiers.
7. For these reasons, I conclude that the use of the land for aggregate handling results in harm to the living and working conditions of neighbouring occupiers of dwellings in Thornford Gardens and other commercial premises in Stock Road and Potters Way with particular regard to dust pollution and noise disturbance. As a result, the use conflicts with Policy DM1 of the Southend Development Management Document and the National Planning Policy Framework that seek to protect the living and working conditions of immediate neighbours and the surrounding area, including relating to noise and pollution.

Conclusion

8. For the reasons set out above, I conclude that on balance the development does not accord with the development plan. The appeal on ground (a) therefore fails.

The Appeals on Ground (g)

9. Appeals on this ground are that the period specified in the notice for compliance falls short of what should reasonably be allowed.
10. The appellants suggest that the four month compliance period is not sufficient as they would like to complete the monitoring and reapply for planning permission. They suggest that this would take three months to complete and would like sufficient time after that to submit and receive a decision on a planning application. As a result, they suggest a period of eight months would

be necessary to complete the monitoring and complete the planning application process.

11. I accept that it may take three months to complete the necessary monitoring and prepare a report setting out any additional dust suppression measures, as well as overcome the issues relating to noise, that would be necessary to overcome the issues raised in this appeal. However, I consider that a period of six months would be sufficient to complete this process. If the Council were to approve a resulting planning application, the appellant would be able to alter the development in accordance with s180 of the Act.
12. For these reasons, I conclude that the appeals under ground (g) should succeed and I shall vary the notice to provide a period of six months to comply with the requirements.

Formal Decision

13. It is directed that the enforcement notice is varied by altering the time for compliance at section 5 'what you are required to do' to read:

Time for compliance: 6 months after this Notice takes effect.

14. Subject to the variation, the appeals are dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

AJ Steen

INSPECTOR