
Appeal Decision

Site visit made on 3 August 2020

by Diane Lewis BA(Hons) MCD MA LLM MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 August 2020

Appeal Ref: APP/W0530/C/20/3248872

Land at 22 Cambridge Road, Foxton, Cambridgeshire CB22 6SH

- 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 Andrew Miller against an enforcement notice issued by South Cambridgeshire District Council.
 - The enforcement notice, numbered SCD-ENF-0214/18, was issued on 14 February 2020.
 - The breach of planning control as alleged in the notice is:
Without Planning permission:
 1. Changed the use of residential land to a coach storage area.
 2. Developed an area of hardstanding for use as a coach storage area.
 - The requirements of the notice are:
 - 1) Cease the use of the residential land as coach storage area.
 - 2) Remove all coaches and other public service vehicles from the land.
 - 3) Remove the hardstanding from the land.
 - 4) Reduce the number of coaches and other public service vehicles on that area of the land approved by lawful development certificate S/0343/04/LD to no more than 6 (six).
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c) and (d) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act as amended.
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DECISION

1. The enforcement notice is quashed.

REASONS

Planning history of the Land

2. The plan attached to the enforcement notice identifies the Land to which the notice relates and within the Land an area hatched in black where the unauthorised developments are alleged to have taken place. The hatched area extends over much of the Land but excludes the area immediately to the south of the access road, including a vehicle workshop and the extended dwelling further into the site.

3. The Land covers the same area that was granted a certificate of lawful use or development under section 191 of the 1990 Act for an existing use¹, which included the dwelling known as 22 Cambridge Road and 'the coach depot trading under the name or style of Andrews Coaches'. The use described in the First Schedule as lawful on 6 February 2004 comprises two elements – (i) the existing dwelling and garden land used and occupied for residential purposes (the unhatched area on the 2004 LDC plan), and (ii) use as a commercial coach depot for 6 coaches with access from the public highway via the adjoining filling station forecourt (the land shown hatched on the 2004 LDC plan).
4. The area shown hatched on the enforcement notice plan is essentially the garden land identified on the 2004 LDC plan.
5. The planning history also includes an application dated 5 February 2018 for a certificate of lawful use or development (under section 191) for the use of land for the storage of coaches (ref S/0737/18/LD). The site was a rectangular area of land to the south west of the dwelling, part of the garden land in the 2004 LDC. The Council refused to issue a certificate because the storage of coaches was considered to comprise a material change of use from residential garden land, development for which planning permission was required. The material change of use, based on the submitted information, was found on the balance of probabilities not to be immune from enforcement action because it had taken place within the ten year period up to the submission of the application.

Enforcement notice

6. Taking into account the site history and the representations on the current appeal, I raised with the main parties several matters related to the enforcement notice, including the planning unit, the use(s) confirmed as lawful by the LDC, the description of the alleged breach of planning control, the extent of the hardstanding and how step 4 in the requirements related to the description of the alleged breach.
7. In terms of use, the notice is directed at the use of land as a coach storage area. There is a distinction between parking and storage, based on the judgement *Crawley BC v Hickmet Ltd*². Parking means leaving a vehicle while it is in current use, whether that is for short or long term. Storage takes place when something is put away for a period of time because its use is not contemplated in the short term. It did not appear that this distinction was taken into account in the drafting of the notice and in the representations. Furthermore, the appellant's statement of case in the site description refers to an existing coach business operating from the site known as Andrews Coaches.
8. As the Council has correctly observed, on site a small number of older model of coaches appear to be stored on unsurfaced land near to the back of the dwelling. When I visited the site some 17 coaches were also parked up on the hard standing west of the dwelling and appeared to be the fleet of coaches used normally for service provision. The representations on the ground (a) appeal described the business operation that has been taking place from the site (pre Covid-19 restrictions), where the coaches are used in transport

¹ LDC ref: S/0343/04/LDC issued by the Council on 20 July 2004, subsequently referred to in this Decision as the 2004 LDC

² *Crawley Borough Council v Hickmet Ltd* [1998] 75 P&CR 500

services to local employers and schools. Elsewhere on the Land is a workshop and a portacabin functioning as an office.

9. Overall the evidence indicates that in addition to the residential dwelling the Land functions as a coach depot where parking and storage of coaches takes place, alongside other associated activities. As seen above, a coach depot was one of the uses certified as being lawful by the 2004 LDC. The appellant did not object to such a description and the Council agreed that a commercial coach depot would be a more appropriate description of a primary use of the land.
10. This conclusion on the current use raises the issue of the planning unit and how the enforcement notice takes account of the 2004 LDC, which in turn would affect the wording of any correction to the description of the alleged breach. The appellant considers that the 2004 LDC confirmed a lawful mixed use for residential and a commercial coach depot where the level of use is benchmarked at 6 coaches. The existing planning unit is considered to be the Land. The Council takes a different view and considers that the 2004 LDC split the original planning unit into 2 separate planning units and conferred a lawful use on each individually. No view is expressed on the planning unit(s) that existed when the notice was issued.
11. If the Land was and remains a single planning unit in a mixed use, the residential use remains a primary use but the scale of the coach depot has expanded in site coverage and the number of coaches has increased above 6. Consideration would need to be given as to whether a material change of use has occurred through intensification. A different form of wording and assessment would be required in the event the 2004 LDC confirmed the Land was divided into two planning units and the residential use is still considered to be a separate planning unit. In view of the differing views expressed by the main parties it would not be appropriate to conclude on the matter of the planning unit and the nature of any breach without further submissions from them.
12. Turning to the operational development and the plan attached to the enforcement notice, the hatched area extends to the east/south eastern boundary of the Land and right up to the residential buildings. However, my site visit confirmed that the dwelling has a garden to the rear and side. There is nothing to indicate that the coach depot use has encroached onto this garden land. On the Land the areas of hardstanding consisted of an area where the fleet of coaches were parked, the circulation area near to the site access track and the workshop and an area at a slightly lower level nearer to the workshop and the office where there were skips, a container and lorry body, drums, equipment and so on.
13. The Council has submitted a revised plan that takes account of the garden but extends the hatching to include all the hard surfaced areas, including the area covered by the 2004 LDC. For the purposes of the notice the area of the alleged unauthorised development must be clear. The plan should identify the hardstanding the notice is directed at and which the Council considers has been provided within the four year time limit. The amended plan has not clarified the position.
14. Under section 176(1) of the 1990 Act I have power to correct any defect, error or misdescription in an enforcement notice provided that the correction will not cause injustice to the appellant or the local planning authority. There is no

objection to correcting the term 'a coach storage area' to 'a coach depot' but the planning unit is critical to the wording of the alleged breach of planning control. It is also unclear whether the Council considers the unauthorised hardstanding is more or less extensive than originally shown. The appeals on ground (c), (d) and (a) are based on the notice as issued and the appellant may well wish to revisit the submitted evidence or amend the grounds of appeal. Witness statements are not addressing the use as a coach depot and therefore may not be reliable as a source of evidence. The description of the deemed planning application under the ground (a) appeal would be different. The requirements would need to be reviewed. These matters are wide ranging and could not be addressed satisfactorily within the current appeal process without injustice to the main parties.

Conclusion

15. For the reasons given above I conclude that the enforcement notice does not specify with sufficient clarity the alleged breach of planning control and hence the steps required for compliance and the land where the breach of planning control is alleged to have taken place. It is not open to me to correct the errors in accordance with my powers under section 176(1)(a) of the 1990 Act as amended since injustice would be caused were I to do so. The enforcement notice is invalid and will be quashed. In these circumstances the appeal under grounds (c), (d), and (a) as set out in section 174(2) of the 1990 Act as amended and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended do not fall to be considered.

Diane Lewis

Inspector