



Appeal Decision

Site visit made on 12 August 2020

by Roy Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 September 2020

Appeal Ref: APP/B5480/C/19/3228832

178 Crow Lane, Romford, Essex RM7 OES

- 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 Henry Albert Tebbutt against an enforcement notice issued by the Council of the London Borough of Havering.
- The enforcement notice was issued on 12 April 2019.
- The breach of planning control as alleged in the notice is Without the benefit of planning permission, the material change of use of part of the car parking area to the front of Copsey's premises, 178 Crow Lane, Romford, RM7 OES shown hatched in black in the attached site plan to use for cooking of food and sale of food and drinks for take away and eating on site.
- The requirements of the notice are 1. Cease the use of the land as edged in black on the site plan for cooking and sale of food and drinks; 2. Remove the unit used for cooking and sale of food and drinks from the land; 3. Remove any signage, furniture used in connection with unauthorised use and remove any rubbish accumulated as a result of taking steps 1 and 2 above.
- The period for compliance with the requirements is one month.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice upheld with a correction.

The appeal on ground (b)

1. The ground of appeal is that the breach of control alleged in the enforcement notice has not occurred. The alleged breach is change of use to cooking of food and sale of food and drinks for take away and eating on site.
2. The land affected by the notice includes a number of vehicle repair and maintenance businesses. However it would appear that the appellant also owns additional land that is beyond, but adjoins, the affected land and which is used for storage and distribution purposes. The alleged development has taken place within an informal parking area at the front of the site, adjacent to Crow Lane, and includes the siting of a unit used for the preparation and serving of food and drink.
3. The appellant has referred to staff working within the wider site not being charged for this catering service, which is subsidised by the landlord; the development being sited so as to be available for all staff, having replaced a smaller, inadequately sized canteen; constraints on available space for vehicle manoeuvring meaning that adverse health and safety implications would arise if the canteen were to be relocated within the wider site; the presence of

double yellow lines serving to restrict parking outside the site with further traffic regulations meaning that there are reduced traffic flows on Crow Lane; the service reducing the need for staff to travel away from the site; and signage displayed on the catering unit, giving the impression that it is open to the public, already being in place when the unit was acquired.

4. However, these representations concern the merits of the development and are not material to whether the alleged unlawful use of the land has actually occurred, in the context of a ground (b) appeal.
5. There is no dispute between the parties that this use is taking place, with the food and drinks supplied being both consumed on site and taken away. It was also evident from my visit that the unit was in place, though was temporarily closed at the time. From the information before me I am satisfied that the property is being used as alleged and that accordingly the allegation of the current use is correct. The appeal on ground (b) must fail.

The appeal on ground (c)

6. The appeal on ground (c) is that there has not been a breach of planning control. The appellant's case in this regard is that the alleged use is ancillary to the various business uses that take place within the wider site that is in the appellant's ownership, including storage and distribution and vehicle repair. He says given that it is an ancillary use it does not constitute a material change of use. The onus of proof, with regard to this appeal, rests with the appellant and the standard of proof is the balance of probability.
7. For a use to be regarded as ancillary, an essential feature is that there should be a functional relationship between it and the primary use(s). An ancillary use would expect to be functionally dependent on a primary use(s) such that it owes its existence to that use(s).
8. The appellant estimates that some of the sales of products from the alleged use are to passing trade (possibly around 10 percent of clientele). However, the basis of this estimate is unclear and the appellant has not provided any formal analysis of the trade patterns associated with the alleged use. There is certainly no evidence to show that sales are not taking place to clientele who are not working within the wider appeal site. It appears that there are several other businesses and residents located in the vicinity that might choose to use this catering service and, notwithstanding the constraints on parking close to the site, it seems to me that the unit would be within reasonable walking distance, for potentially many clientele.
9. Furthermore, it seems to me that, the canteen unit has been placed in a conspicuous position at the front of the site which would serve to maximise its visibility to potential clients. Whilst the appellant has referred to the positioning of the unit being influenced by health and safety concerns, and indeed it was evident from my visit that relocating the unit deeper into the site may cause difficulties for vehicle manoeuvring, this does not mean that the present position of the unit would not serve to attract passing trade. There is no evidence before me to support a stance that passing trade would be dependent on illegal parking.
10. Despite representations from the appellant, that the running of the use is subsidised by his company; that it would not be viable as a separate business

and that signage advertising the business could be removed from the unit, I am unable to reach the view on the balance of probability, based on the information before me, that the alleged use would be functionally dependent on the business uses taking place on the wider site.

11. I therefore conclude, on the balance of probability, that the alleged use is more than simply ancillary to the primary business uses. A material change of use has therefore occurred. The appeal on ground (c) fails.

The appeal on ground (f)

12. The ground is that the steps required to comply with the notice exceed what is necessary to remedy the breach of planning control. With regard to the unauthorised change of use the objectives of the notice are to discontinue the use of the land and to restore the land to its condition before the breach took place. It follows that the purpose of the notice is to remedy the breach. The notice specifically identifies the change of use as having occurred on part of the car parking area 'hatched' black. Therefore the corresponding requirement in paragraph 5 should be to cease the use of the 'hatched' area, rather than the broader 'edged' area. However I am satisfied that the notice can be corrected accordingly without resulting in injustice.
13. The appellant's ground (f) appeal is based on the assertion that the Council has previously said that it would accept the retention of the use, so long as it is re-sited. However no alternative siting for the alleged use is suggested by the appellant, which would remain open to be explored with the Council.
14. In any event given that the purpose of the notice is to remedy the breach of planning control, this can only be achieved by ceasing the unauthorised use on the site and by restoring the land to its condition before the breach took place. To require that does not, therefore, exceed what is necessary and the appeal on this ground must fail, subject to the notice being corrected as set out above.

The appeal on ground (g)

15. The ground of appeal is that the time given to comply with the requirements is too short. The appellant says that a period of six months is required to enable alternative arrangements to be put in place so that staff and visitors are not disadvantaged.
16. However, I am mindful that the site is not in a remote or isolated location, but in a densely developed urban area that would be reasonably accessible to alternative catering and hospitality services. Furthermore, I see no reason why some staff would not choose to bring certain breakfast / lunch provisions with them to the site.
17. Whilst I understand that the loss of the catering unit may result in some inconvenience for existing staff, I do not agree that those staff would be significantly disadvantaged. The compliance period appears to be reasonable and as such the ground (g) appeal fails.

Conclusion

18. For the reasons given above I consider that the appeal should not succeed. I shall uphold the enforcement notice with a correction.

Formal Decision

19. It is directed that the enforcement notice be corrected by deleting the word 'edged' in paragraph 5 1. and substituting the word 'hatched' instead.
20. Subject to this correction, the appeal is dismissed and the enforcement notice is upheld.

Roy Merrett

INSPECTOR