
Appeal Decision

Site visit made on 1 December 2020

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 December 2020

Appeal Ref: APP/A0665/C/20/3257792

Land to the south east of the Brethren's Meeting Hall, Hob Lane, Dunham on the Hill, Chester, Cheshire WA6 0LW

- 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 Ryan Devenish (Quanto Enterprise Ltd) against an enforcement notice issued by Cheshire West and Chester Council.
 - The enforcement notice was issued on 3 July 2020.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a building being used for the storage and sale of retail goods ("the unauthorised development").
 - The requirements of the notice are to cease the use of the building for storage/sales and remove the building from the land.
 - The period for compliance with the requirements is 12 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (b) 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 is corrected by:
 - 1) The deletion of the words 'storage and' from section 3 of the notice and the addition of the words 'to members of the Brethren Church community (sui generis)', after 'goods'.
 - 2) The deletion of the word 'storage/' from section 5 of the notice.
2. Subject to these corrections, the appeal is dismissed, and the enforcement notice is upheld.

Preliminary Matters

3. Representations in respect of the merits of the development enforced against, including the Council's interpretation of development plan policy and the reasons for issuing the notice are matters which relate to planning merits. However, as there is no appeal on ground (a) and no deemed planning application for me to consider, the planning merits of the development are not relevant to my decision.
4. Since the appeal was made, The Town and Country Planning (Use Classes) Order 1987 (UCO) has been amended. In the interests of consistency, I have referred to the definitions as they appeared in the UCO prior to the amendment.

5. The postcode given in the banner heading above is taken from the appellant's appeal form since none was given on the enforcement notice.

The appeal on ground (b)

6. An appeal on ground (b) is a claim that the matters stated in the enforcement notice (which may give rise to the alleged breach of planning control) have not occurred as a matter of fact. The burden of proof is on the appellant and the relevant test is the 'balance of probabilities.'
7. The appellant's case on this ground relates to the alleged use and is essentially that the enforcement notice is ambiguous as it does not refer to the 'detailed use class' operating at the site – being in their view, a retail club (*sui generis*) and should be quashed.
8. There is no dispute between the parties that the building is development for which planning permission is required and as permission has not been granted it is unauthorised and a breach of planning control. Additionally, there is no dispute that the building is being used for the sale of retail goods, albeit to a limited group and this is consistent with what I observed at my visit.
9. The appellant contends that the use is not an A1 use as goods are not sold or available to wider members of the public but that it is a private members retail club – for use by members of the Brethren Church community and as such, the use is akin to a retail club (*sui generis*).
10. The appellant considers that it is essential that the allegation is framed correctly as this will affect how the Council consider any future planning applications for the same use on alternative sites. Whilst it is necessary for the allegation to be accurate, how the Council assess any future applications is a matter for them and has no bearing on my determination in this appeal.
11. The allegation refers to the use for the storage and sale of retail goods, whilst undoubtedly there will be an element of storage, I agree with the appellant that the storage is not a primary use on its own and is merely incidental to the use for sale of retail goods.
12. Based on the evidence before me I also agree with the appellant that the use would not fall within use class A1 which relates to the sale of goods other than hot food, where the sale, display or service is to visiting members of the public. However, whilst I acknowledge that the Council in their officer report for a previous planning application suggested that the use is similar to an A1 use, the enforcement notice does not refer to use class A1.
13. A use which falls outside of any use class, is commonly referred to as a *sui generis* use. Some *sui generis* uses are specifically referred to in Article 3(6) of the UCO, but many are not named in the UCO. Consequently, in the case of a *sui generis* use, not named, there would be no reason to refer to the UCO.
14. On ground (b) I conclude that whilst a building has been erected for use for the sale of retail goods, there is no primary use for storage and the sales are specifically for the benefit of the Brethren Church community and the allegation is inaccurate in these respects.
15. Whilst this finding will lead to success of the appeal under ground (b) that does not mean, necessarily, that the notice must be quashed. It is open to me to

correct any defect, error or misdescription in the enforcement notice. The powers of correction are wide, limited only by the proviso that no injustice shall be caused to the appellant and/or the Council.

16. The appellant also suggested that the allegation could be amended to reflect its use as a retail club. However, they provided no explanation about the characteristics of, or, how retail warehouse clubs (as described in the UCO) operate and how the use subject of the appeal is similar. In any case, in describing the use I consider it is best to focus upon what is actually happening rather than attempting to attach a label.
17. The allegation can, however, be corrected to reflect that the development was the erection of a building being used for the sale of retail goods to members of the Brethren Church community, a sui generis use. Such corrections do not enlarge the scope of the breach or requirements and consequently, there would be no injustice to either party. I shall correct the notice accordingly under the available powers of section 176(1)(a) of the Act.

The appeal on ground (g)

18. The appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable. The appellant stated that they require more time in order that they can find and relocate to alternative premises, which will include gaining the necessary planning permission, legal consents and undertaking the fitting out of the building.
19. The appellant says that even if a site can be identified quickly, within three months, the period does not take into account any delays or complications associated with this process. Consequently, a period of 24 months is required.
20. The purpose of the time period within an enforcement notice is to allow for the use to cease and the physical works associated with the notice to be removed. The appellant's submissions largely relate to the time it will take to find and move to alternative premises.
21. Where an appeal is made against an enforcement notice, regardless of the grounds, the appeal 'stops the clock' and the period for compliance does not start until the date of the appeal decision. If the appeal proceeds on ground (g) and other grounds, the appellant is entitled to assume success in the other grounds, and so it is necessary to start from the date of the appeal decision when considering what the 'reasonable' period for compliance would be. It would not therefore, be reasonable to attribute weight to the time before or between the notice being served and the determination of the appeal.
22. However, notwithstanding the time lost as a result of restrictions associated with the COVID-19 pandemic, beyond reference to a Rightmove search dated 15 August 2020, there is no substantive detailed evidence about the availability of alternative premises. Consequently, I cannot be certain that the search would take the 6 – 12 months suggested by the appellant.
23. I acknowledge the time taken by the Council in determining the planning application however, the statutory determination period for an application of this nature is eight weeks, so this is a matter of little weight.
24. Whilst in cases involving business uses, it is necessary to weigh the interests of the business and customers against the harm caused by the activities the

subject of the notice, the appellant provided no explanation about the likely effect on the operations of Quanto Enterprise Ltd. Nor did they provide substantive explanation about the effects of the potential loss of funding to Nantwich School.

25. The use enforced against is inappropriate development in the Green Belt which, by definition, is harmful to the Green Belt. Substantial weight must be attached to the harm to the Green Belt and should not be permitted to continue for any longer than necessary.
26. It would be inappropriate to extend the period to more than one year, which would be akin to a grant of unconditional temporary planning permission for the unauthorised development and would blunt the urgency of taking action.
27. In any event, whilst I acknowledge the appellant's particular requirements, the period of 12 months given is a reasonable and proportionate response to the breach of planning control, to enable the various requirements of the notice to be met, whilst providing an opportunity for an orderly transition to another location.
28. I have had due regard to the Public Sector Equality Duty (PSED) contained in section 149 of the Equality Act 2010. Notwithstanding these important considerations, it does not follow from the PSED that the appeal should succeed. In this case, there is no evidence that the development is the only means by which the needs of the Brethren Church community can be met. Accordingly, dismissing the appeal would be a proportionate response given the identified harm.
29. Consequently, the appeal on ground (g) fails.

Conclusion

30. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections.

Felicity Thompson

INSPECTOR