



Appeal Decision

Site visit made on 1 December 2020

by Roy Curnow MA BSc(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd March 2021

Appeal Ref: APP/D1780/C/20/3254511

**Land at and adjacent to 1 The Cottage, Millbrook Point Road,
Southampton SO15 0JW**

- 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 David Strydom against an enforcement notice issued by Southampton City Council.
 - The enforcement notice, numbered 19/00493/ENCOU, was issued on 15 May 2020.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the land from use as a single residential dwelling and use as a hardstanding associated with the Millbrook Waste Water Treatment Plant to a mixed use comprising a residential dwelling and use as a hardstanding associated with the Millbrook Waste Water Treatment Plant and use for the storage, preparation, display and sale of motor vehicles.
 - The requirements of the notice are: (1) Cease the use of the land for the storage, preparation, display and sale of motor vehicles; and (2) Remove the storage containers and staircase from that part of the land shown hatched in black on the attached plan.
 - The period for compliance with the requirements is 2 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.
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Decision

1. 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.

Reasons

2. 1 The Cottage is a one of a pair of detached two-storey dwellings that are accessed from a spur road, which runs from a road through the Port of Southampton (the port). It has a generous rear garden and a hard-surfaced area to the front. The two houses flank this spur road at the point where there is a gated access to the large Millbrook Waste Water Treatment Works (WWTW). The two houses lie in an area that is heavily industrialised/commercialised port location that is very close to the main Southampton to Bournemouth railway line and associated sidings, and the WWTW.

Ground (a)

3. The main issues are: whether the development is appropriate to its port location, including the effects on roads in the port; and the effect of the development on the living conditions of the occupants of No 1 The Cottage.

Port Location

4. The Council states that the site lies “within the heart of the operational port land”. Whilst I have not been provided with a copy of a plan showing the boundary of the port, from what I saw at my site visit, and as the appellant does not challenge this, I take it to be the case. Policy CS9 of the Local Development Framework Core Strategy Development Plan Document, adopted January 2010, (‘CS’), relates to development within the Port of Southampton. Save for proposals relating to a cruise line terminal that help create a visitor destination, it sets out that the Council will refuse planning permission for non-port related development within the port. There are no listed exceptions to this approach. None of the uses that the land that is being put to, as alleged in the notice, are port related. Therefore, they are contrary to CS Policy CS9.
5. Whilst the residential use of No 1 does not accord with the policy, its presence is explained by its historic association with the WWTW. The use of the land for vehicle storage, preparation, display and sale purposes introduces a new ‘non-conforming’ use. I will refer to this hereafter as the ‘vehicle business’. The Council was of the view that the appellant argues that the car sales use does not exist. Had this been the case, there might have been a hidden appeal under either ground (b) or (c). That is to say that the matters have not occurred or that they do not constitute a breach of planning control, respectively. However, the appellant has stated that although this does not presently occur, it has in the past. Therefore, I need not open either of those lines of appeal.
6. Whilst CS Policy CS9 does not specify traffic implications, its aim to preclude uses that are not port-related uses is nonetheless unambiguous. That the Council also refers to the effect of the vehicle business on the roads in the port, in relation to this policy, is not an unreasonable position.
7. Section 38(6) of the Planning and Compensation Act sets out that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise.
8. The appellant states that the number of movements associated with the use would be no more than would be reasonably be expected from the house. Although I do not have evidence of traffic movements relating to people visiting the site to purchase vehicles, I accept that this was likely to be a small number. It is acknowledged by the appellant that there are a small number of movements of vehicles from the site to Holton Heath, and that these are usually made by the appellant who is later dropped back home by an employee. A commensurately small number of movements to the site arises from the delivery of vehicles to replace those that are sold. These movements are in addition to those solely associated with the domestic use of No 1.
9. The road through the docks to the spur road is not very wide and is very busy. Amongst other things, it serves berths for container ships and their associated extensive areas of piled containers. The road is used, amongst others, by a great number of large, heavy goods vehicles, as well as port vehicles moving containers from one site to another.
10. By reason of Policy CS9, the vehicle use is incompatible with its port location. Traffic movements to and from the site use this busy road. Adding even a small

number of unnecessary vehicle movements to this scene, through the introduction of new non-conforming uses, should be avoided.

11. The proposal that the use might be restricted to the storage of cars at the front of the property has been made. The Council has suggested conditions in this regard, were the appeal allowed, and refers to a minimum of 6 vehicles. Restricting the use of the land in this way would not, however, overcome the in-principle objection in CS Policy CS9 and would still lead to unnecessary traffic movements through the docks.
12. My finding on this issue is, therefore, that the use of the land is contrary to CS Policy CS9 that seeks to preclude non-port related uses in the port area and would generate unnecessary traffic on the very busy dock roads

Living Conditions

13. CS Policy CS16 requires that a detached home should have a minimum of 90 sqm of useable private space, and that this should be a minimum of 10m deep. The appellant states the rear garden has a width of 20.6m, with a depth of little over 19m. This has not been challenged by the Council, and I found that these figures appeared to be accurate at my site visit. Taking the appellant's measurements to be the case, whilst its area is less than the 431sqm he estimates, its area and depth are considerably in excess of the minima referred to by the Council.
14. Two containers, one on top of the other, are sited in the north corner of the rear garden. They are estimated to measure 10m long by 3m wide. The consequent 30sqm reduction in the area of the garden does not reduce its useable area below the Policy CS16 threshold. Although the site lies close to an area of the port where containers are stacked very high, the manner in which this has been done on the site is incompatible with its domestic setting. They appear incongruous and harmfully dominate the rear garden to the detriment of the living conditions of the occupants of No 1.
15. Save for the siting of the containers, the Council does not refer to the use of the rear garden by the vehicle business in its statement. An aerial photograph in this seems to show vehicles parked on the land. However, this photograph is simply referred to in paragraph 8 of the of its statement in respect of the use of the land to the front of No 1. A third party has made submissions, including photographs of vehicles in the rear garden. Although not specifically referred to in the Council's statement, as the red line on the plan attached to the notice encompasses the rear garden, the notice would preclude its use for the vehicle business.
16. Although I have found that No 1 has a useable private amenity space in excess of that required in CS Policy CS16, even when taking into account the siting of the containers in the rear garden, the containers are nonetheless harmful to the occupants of No 1.
17. As the containers have been sited to meet the needs of the vehicle business, it is appropriate for the notice to secure their removal. This is the case, even though the garden is of an adequate size, even with the containers on it. Their removal is justified as part of the Council's aim to cease the use of the land by the vehicle business, which is contrary to its adopted policy position.

Other Matters

18. The third party's photographs also show vehicles parked on the spur road. As that land is outside the red line on the plan attached to the notice, it is not subject to the requirements of the notice. Similarly, the notice does not refer to noise generated by the business. As I have no substantive evidence of problems associated with noise generation, and I found the site's location to be noisy, I cannot find against the development on this ground.

Conclusion

19. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Roy Curnow

Inspector