



Appeal Decision

Site visit made on 24 April 2021

by Elaine Gray MA(Hons) MSc IHBC

an Inspector appointed by the Secretary of State

Decision date: 28 May 2021

Appeal Ref: APP/H4505/C/20/3263272

Dynamix Extreme, Unit 1, Albany Road Junction, A184 (Park Lane), Gateshead, Tyne and Wear NE8 3AT

- 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 Ms Rosa Stourac McCreery against an enforcement notice issued by Gateshead Council.
 - The enforcement notice is dated 13 October 2020.
 - The breach of planning control as alleged in the notice is: Without planning permission the material change of use from a vacant warehouse (class use B2) to a mixed use incorporating leisure comprising of a skate park and circus skills school (E(d)), residential planning unit (C3), the storage of building materials (B8) and storage of scrap vehicles and waste (Sui Generis).
 - The requirements of the notice are: You must cease the use of the land as described in section 3 of the notice and remove from the land all equipment, building materials, scrap vehicles and scrap material brought onto the land for the purposes of that use.
 - The period for compliance with the requirements is 26 weeks.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (d) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be considered.
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Decision

1. The appeal is dismissed, the deemed planning application is refused, and the enforcement notice is upheld.

Ground (d)

2. The appeal on ground (d) is that, at the time the notice was issued, it was too late to take enforcement action against the matters stated in the notice. The onus of proof lies with the appellant, and the test is balance of probabilities.
3. The time limits for taking enforcement action are set out in s171B of the Act. In respect of a breach of planning control involving the material change of use of land, no enforcement action may be taken after the end of the period of 10 years beginning with the date of the breach. The enforcement notice is dated 13 October 2020, and so in order to succeed, the appellant needs to demonstrate that the alleged material change of use began on or before 13 October 2010, and continued for an uninterrupted period of 10 years.
4. Previously, temporary planning permission (ref: DC/10/00406/COU) was granted for 'Change of use from vacant warehouse (use class B8) to indoor

- skate park with outdoor bike track (use class D2)', expiring on 8 February 2014. The time limit was to ensure that the site would be restored to its former condition in the interests of safeguarding the Baltic Business Quarter for future economic development. Although the appellant made two attempts to submit further applications, the permission has not been renewed.
5. Of the uses attacked by the notice, only the indoor skate park was included in the temporary permission. That use was therefore only lawful until the lapse of the permission in 2014. It follows therefore that the continued skate park use has been unlawful for the period between 2014 and 2020, which is less than 10 years. It cannot therefore be immune from enforcement action.
 6. The Council contend that the other elements contributing to the alleged mixed use commenced later. With regard to the storage use, they submit, at Appendix 1, photographs from the site visit for the withdrawn planning application (ref: DC/14/00496/FUL). These contrast with photographs in Appendix 2, which show quantities of materials being stored on the land in 2018. The appellant disputes this evidence, stating that the site has been in 'constant evolution', and in any case, the photos are from different places and viewpoints. However, the onus lies on the appellant to substantiate the claim that the storage use has persisted continuously for 10 years, and little such evidence has been produced.
 7. Turning to the residential use, the appellant states that Mr Rico Jakk began staying in a caravan overnight at the site between January and September 2010 in the role of caretaker, occasionally joined by the appellant. In response to the Planning Contravention Notice, the owners of the site, Chanters Baltic LLP, stated that they had not given consent for any part of the site to be used for residential purposes. The appellant disputes this and contends that the lease allows for the accommodation of visiting performers and for a caretaker/site manager.
 8. She also states that the need for residential accommodation was referred to in the Design and Access statement accompanying the 2010 application. The excerpt from this statement refers to provision of dormitories for visitors and 'occasionally for key staff working later on renovation projects etc.' No mention is made of the portacabin marked 'Caretaker's Flat'.
 9. In any event, a prohibition notice was served by the fire brigade in 2016 requiring the cessation of the residential use. The Council received confirmation that the notice had been complied with and that the use had indeed ceased. Then, in 2018, the Council received a further complaint that someone was living at the site. Mr Jakk confirmed that he was residing in a portable building on the land.
 10. Therefore, I am satisfied that there was a significant gap in the residential use following the service of the prohibition notice. The appellant offers little information to contradict this. It follows that if the residential use has not been continuous for the relevant 10 year period, it cannot be immune from enforcement action.
 11. The appellant's evidence focuses on the commencement of the use of the site in 2009, which is not in doubt. However, it falls significantly short of establishing the continuation of the unauthorised uses in question for 10 years. As a result, the appeal on ground (d) fails.

Ground (a) and the deemed planning application

12. The appeal on ground (a) is that planning permission should be granted for what is alleged in the notice.

Main Issue

13. The main issue is the effect of the development on the delivery of the Baltic Quarter regeneration scheme, with particular regard to character and appearance and land usage.

Reasons

14. The site is allocated in the Core Strategy and Urban Core Plan for Gateshead and Newcastle upon Tyne (CS) within Policy QB3 'Quays and Baltic Development Opportunity Sites'. CS Policy QB3 Part 5 relates specifically to the Baltic Business Quarter and sets out a number of requirements for development in the area. CS Policy QB3 Part 5ii requires development to provide streets with built frontages and active uses, and Part 5iii seeks to create an urban form of development reflecting the Urban Core location.
15. The main structure occupying the site is a large, detached, mostly single storey warehouse building of metal cladding construction with a pitched roof. It is set on an area of land bounded by high metal palisade fencing. The building appears closed and inward looking, and so it does not contribute an active built frontage to the street scene. The fencing has a defensive appearance that does not create a satisfactory urban form. The site as a whole has the appearance of an edge-of-town or out-of-town industrial facility which is not in keeping with the requirements of Parts 5ii and 5iii of the policy.
16. In her statement of case, the appellant refers to potential designs for the site including a container-concept wrap around idea. However, this scheme is not before me for consideration, which limits the weight I can afford it. From what detail there is, this appears to be a proposal to surround the warehouse building with shipping containers, and there is little evidence that this would be compatible with the built form that the Council wishes to see in this location.
17. In terms of land use, CS Policy QB3 prioritises the site for business accommodation, hotels and ancillary retail uses, as well as complementary leisure/recreation and education uses where a critical mass of office development is maintained. Of the unauthorised uses on site, residential and storage do not fall within the prioritised uses for the site.
18. CS Policy QB3 promotes leisure usage as complementary to the other main uses that are sought. As leisure and education appear to form the core use at the site, conflict arises here. Overall, it appears that the development makes little contribution to the uses that are prioritised for the site, particular the critical mass of office development. Although the appellant argues that the unauthorised uses fall within the definition of 'employment', there is little detail of the number and types of jobs provided.
19. I note future proposals which include business accommodation in the form of creative studio spaces for freelance artists or small cultural businesses, social enterprise business incubation and development, and accommodation of other local businesses and cultural organisations. However, there is no indication

that these proposals have been drawn up, which substantially limits the weight I can attribute to them.

20. It should be noted that, in the context of an enforcement appeal, the deemed application seeks permission specifically for the unauthorised development attacked by the notice. If an appellant wishes to seek permission for an alternative development, they are free to do so. It is outside the scope of this appeal to consider alternatives that, it appears, have not been progressed to any stage that would allow them to be assessed against the development plan.
21. The appellant refers to existing office space in the area, and undeveloped plots of land owned by the Council which could contribute to the aims of CS Policy QB3. However, the policy covers all the land within Baltic Business Quarter and so strong justification would be needed to set it aside in favour of a form of a development that conflicts with it.
22. The appellant cites environment benefits but these are not detailed. I acknowledge that the development provides facilities that do not exist elsewhere in the immediate area, and that it is a use that could well be seen to complement the aspirations for the area. However, there is little before me to indicate that this type of operation can only occur on this site and could not be located elsewhere in the Gateshead area, whilst maintaining its leisure offer to the community.

Other matters

23. I have taken into account the appellant's concerns that if the site is vacated, it will once again fall into disrepair and possibly attract undesirable behaviour. However, it would be the responsibility of the landowner to address these matters, and so this can have little bearing in my considerations. The appellant also refers to the short-term tenancies that have hindered their work. However, this is a private matter between the appellant and the landowner and has not led me to a different conclusion on the main issue above.

Conclusion on ground (a)

24. The development fails to meet the requirements of CS Policy QB3 Parts 5ii and 5iii with regard to character and appearance and land use. The appellant does not appear to have addressed the other criteria within Part 5, for example, matters relating to green infrastructure and water quality and drainage. Therefore, in the absence of any compelling reason to set aside the Council's adopted policy for this particular site, and in view of the lack of evidence as to why the development could not exist elsewhere, I conclude that it unacceptably conflicts with the aim of CS Policy QB3 to deliver the Baltic Quarter regeneration scheme, and thus with the development plan as a whole.
25. The appeal fails on ground (a) and the deemed planning application is refused.

Overall conclusion

26. For the reasons above, the appeal is dismissed, the deemed planning application is refused, and the enforcement notice is upheld.

Elaine Gray

INSPECTOR