



Appeal Decisions

Site visit made on 19 August 2021

by J A Murray LLB (Hons), Dip.Plan Env, DMS, Solicitor

an Inspector appointed by the Secretary of State

Decision date: 21 September 2021

Appeal A: APP/A2525/C/21/3271651

The land known as Highbury Cottage, Back Bank, Whaplode Drove, PE12 0TT

- 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 Mrs Rebecca Vine against an enforcement notice issued by South Holland District Council.
- The enforcement notice, numbered SHDC.EN134, was issued on 24 February 2021. The breach of planning control as alleged in the notice is without planning permission, the material change of use of the Land from residential to mixed use of residential and commercial for:
 - storage of commercial vehicles; and
 - siting of a storage container and other paraphernalia in connection with catering/functions business
- The requirements of the notice are:
 - (i) Cease all unauthorised commercial vehicle/chattel parking including but not limited to the double decker bus, caravan and horsebox.
 - (ii) Remove the commercial storage container and any other paraphernalia connected to the unauthorised commercial use.
- The period for compliance with the requirements is 3 calendar months after the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c) and (f) of the Town and Country Planning Act 1990 as amended.

Appeal B: APP/A2525/C/21/3271652

The land known as Highbury Cottage, Back Bank, Whaplode Drove, PE12 0TT

- 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 Joseph Vine against the same enforcement notice referred to in appeal A above.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (c) and (f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not 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 have lapsed.

Decisions on appeals A and B

1. It is directed that the enforcement notice be:
 - (a) corrected in section 2 by deleting the words in that section and substituting:

"The land adjacent to **Highbury Cottage, Back Bank, Whaplode Drove, PE12 0TT** registered under Title Number LL264449 and shown edged with a thick black line on the attached plan ("the Land");

- (b) corrected in section 3 by deleting the words in that section and substituting:

"Without planning permission, the material change of use of the Land from driveway/parking area used in connection with the adjacent residential use to a commercial use for the:

- storage of commercial vehicles; and
- siting of a storage container and other paraphernalia in connection with catering/functions business"; and

- (c) corrected by deleting the plan attached to the notice and substituting the plan attached to this decision; and

- (d) varied in section 6 by substituting six (6) calendar months as the time for compliance with both requirements.

Subject to these corrections and this variation appeals A and B are dismissed and 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 on appeal B.

Procedural matters

2. Neither appeal form indicated that ground (c) was to be pursued. There is often an overlap between grounds (b) and (c), ground (b) being that the matters alleged have not occurred and ground (c) being that, if they have occurred, they do not constitute a breach of planning control. The appellants' representations could be construed as contending that those matters which have occurred do not give rise to a material change of use, such that there would be no breach of planning control. I am satisfied that there is a 'hidden' appeal on ground (c) and, given that the Council has addressed the substance of this point in its representations, it will not be prejudiced by me considering that ground along with ground (b).
3. After the parties had submitted their statements, the revised National Planning Policy Framework (the Framework) came into effect on 20 July 2021. They were given an opportunity to comment on any implications this might have for their cases, but no submissions were received. My decision will have regard to the revised Framework.

The notice

4. Following my accompanied site inspection, I sought further representations from the parties to clarify the appropriate planning unit, against which to assess the materiality of any change of use.
5. The parties have agreed that the site outlined in red on the original notice plan is not a single planning unit and the activities complained of are not part of a mixed use including residential. They are functionally separate and carried out exclusively on the smaller area edged with a thick black line on the plan now attached to this decision. That area was previously used as a driveway/parking area in connection with the adjacent residential use. The appellants would

prefer if the area identified on the plan extended further north, to cover their land along the whole tree line. However, the plan attached to this decision reflects the factual extent of the use on the ground.

6. I am satisfied that no injustice will result from substituting that plan and correcting the allegation accordingly. The requirements of the notice are unaffected by this, but it necessitates a minor consequential correction to the site address, to refer to "the land adjacent to Highbury Cottage" rather than "land known as Highbury Cottage."

Ground (b)

7. To succeed on this ground, the appellant must prove on the balance of probability that the matters alleged in the notice as corrected have not occurred.
8. Although this ground has been cited, the appellants do not in fact dispute that the land has been used as alleged, for the siting and storage of items in connection with their catering business. Indeed, shortly before the enforcement notice was issued, Mr Vine's Response to a Planning Contravention Notice (PCN) confirmed that the land was being used for the parking/storage of a bus, caravan horsebox, catering units, a shipping container, tools, and event supplies, all for commercial use. This was consistent with what I saw on site, albeit that there was no bus or caravan present.
9. On the evidence before me, ground (b) must fail.

Ground (c)

10. Success on this ground depends on the appellants proving on the balance of probability that the matters alleged do not constitute a breach of planning control.
11. The appellants say they cause no harm to the area, and the bus was only used seasonally for five months of the year, which at most would go out once a week, whereas lorries and school buses pass daily. They add that no excessive pollution or noise is created, there is no immediate effect on neighbours, and they do not have many deliveries.
12. These points might suggest that the change of use is not material, and therefore not a breach of planning control. However, the significant quantity of stored items related to the catering business, which are all visible from the road, nearby public footpath, and surrounding land, give rise to a change in the definable character of the land and its use from the previous use as a driveway/parking area in connection with the adjacent residential use.
13. As a matter of fact and degree, I am satisfied that these changes constitutes a material change of use. Accordingly, there has been a breach of planning control, and ground (c) must also fail.

Ground (a)/the deemed application for planning permission (Appeal A only)

Main issues

14. The main issues are the effect of the development on:
 - the character and appearance of the area; and

- neighbours' living conditions, in terms of visual impact and disturbance through traffic movements.

Reasons

Character and appearance

15. The closest neighbouring dwellings are approximately 100m to the southwest and 400m to the northeast, but the appeal property is surrounded by agricultural fields and there are some allotments accessed from the public footpath to the southeast. There are no other commercial uses in the vicinity and the character and appearance of the area is predominantly rural.
16. In this context, the shipping container, mobile catering units, with 'PIZZA' signs on top, (some in the course of conversion from horseboxes), the gas bottle storage cage, trolleys, crates, miscellaneous storage containers, security lighting, cameras and Heras fencing appear incongruous and intrusive in views from the road and nearby public footpath. Whilst the Heras fencing, with attached green plastic mesh is obtrusive in itself, I am not convinced that the items on the site could be effectively screened with appropriate fencing.
17. The reasoned justification for Policy 1 of the South East Lincolnshire Local Plan 2011 – 2036, (LP) adopted March 2019, indicates that the countryside of the district is a precious resource, mainly in its roles for agriculture and recreation. Accordingly, that policy directs development first to "Sub-Regional Centres" and "Main Services Centres", then "Other Service Centres and Settlements", before locations in the "Countryside", such as the appeal site.
18. In the Countryside, Policy 1 provides that development will be permitted where it is necessary to such locations and/or where it can be demonstrated that it meets the sustainable development needs of the area in terms of economic, community or environmental benefits. LP Policy 2 permits development which meets sustainable development considerations, including in relation to the character and appearance of the area. Policy 3 reinforces this by requiring development to create distinctive places and secure the landscape character of the location.
19. Whilst giving support in principle to development which assists in delivering economic prosperity, LP Policy 7 indicates that new employment uses outside allocated employment areas will only be supported on previously developed land. This is provided, among other things, there is no significant impact on the character and appearance of the area. The reasoned justification states that the LP allocated more than 82 hectares of employment land to provide choice and enable growth, in the right places.
20. These LP policies are consistent with the Framework, and I have seen nothing to demonstrate that the appellants' use requires a countryside location. The appellants say they street trade in surrounding villages, such as Crowland, Thorney and Eye and attend local events. However, I have seen no evidence that suitable premises are not available within employment areas, within easy reach of their normal trading grounds. In any event, whether or not the site could be described as previously developed land, I find that the development causes unacceptable harm to the character and appearance of the area, such that there is conflict with LP Policies 1, 2, 3 and 7.

Neighbours' living conditions

21. Turning to the impact on neighbours' living conditions, the separation distances from the nearest dwellings are such that I find no significant harmful visual impact, over and above the effect on the character and appearance of the area generally. Furthermore, whilst there will be associated traffic movements, I am not persuaded by the evidence that these are of such frequency, or on such a scale that they will cause significant disturbance.
22. Nevertheless, my conclusion on this issue does not overcome my finding of harm on the first main issue.

Other matters

23. Some neighbours complain about the drift of smoke from the burning of commercial waste and suggest the use of the site has encouraged fly-tipping in the locality. However, the burning of commercial waste is not an inevitable element of the use alleged, and I cannot assume it is encouraging fly-tipping. In any event, other statutory controls exist in the relation to these matters.
24. The appellants say they have helped self-employed staff get some work. The Framework indicates that planning decisions should help create conditions in which businesses can invest, expand, and adapt. The creation of employment opportunities is a positive factor, but insufficient detail has been provided to enable me to attach significant weight to it in this case. Moreover, it is not clear why such opportunities would depend on the use of this site and the PCN response made clear that no other persons were employed on the land.
25. The appellants refer to the difficult time experienced recently, which is no doubt a reference to the COVID-19 pandemic, and the uncertain times that will follow if the use must cease on this site. This cannot justify a grant of planning permission but, although ground (g) has not been formally pleaded, I consider it reasonable to extend the period for compliance to 6 months, to enable the appellants to explore options for alternative premises and to keep their business going.

Overall planning balance and conclusions on ground (a)/the deemed applications

26. Having regard to my conclusion on the first main issue, I am satisfied that the development conflicts with the development plan as a whole. I am not persuaded that planning conditions could overcome the harm identified and no other considerations indicate that planning permission should nevertheless be granted. The appeal on ground (a) must therefore fail and the deemed application will be dismissed.

Ground (f)

27. This ground is that the requirements exceed what is necessary to remedy the breach of planning control or, as the case may be, any injury to amenity caused by the breach.
28. The appellants say they have not been given a fair chance to try to come to an agreement to help the situation. However, they identify no lesser steps which would remedy the breach or to injury or amenity.
29. Having particular regard to the requirements of the notice, its purpose is to remedy the breach. There are no obvious lesser steps which would achieve that purpose, and the appeal on ground (f) must fail.

Overall conclusion

30. For the reasons given above I conclude that the appeals should not succeed. I shall uphold the enforcement notice with corrections and a variation and refuse to grant planning permission on the deemed application.

J A Murray

INSPECTOR



Plan

This is the plan referred to in my decision dated:

by J A Murray LLB (Hons), Dip.Plan Env, DMS, Solicitor

Land adjacent to Highbury Cottage, Back Bank, Whaplode Drove, PE12 0TT
registered under Title Number LL264449.

Reference: APP/A2525/C/21/3271651 & APP/A2525/C/21/3271652

Scale: DO NOT SCALE

