



Appeal Decision

Site visit made on 10 June 2021

by J Whitfield BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 October 2021

Appeal Ref: APP/R4408/C/20/3258576

Stairfoot Steel/Metals, Wombwell Lane, Stairfoot, Barnsley S70 3NT

- 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 Watson, Stairfoot Metals against an enforcement notice issued by Barnsley Metropolitan Borough Council.
- The enforcement notice was issued on 27 July 2020.
- The breach of planning control as alleged in the notice is, without planning permission, the material change of use of land to a scrap metal storage and processing facility (*sui generis*).
- The requirements of the notice are:
 1. Cease the use of the site as a scrap metal storage and processing facility.
 2. Ensure all stored scrap metal, including skips, equipment and waste containers are removed from the site including any associated signage relating to the operation.
- The period for compliance with the requirements is 5 months.
- The appeal is proceeding on the grounds set out in section 174(2)(c), (d) and (a) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

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

The appeals on grounds (c) and (d)

1. In an appeal on ground (c), the onus is on the appellant to demonstrate, on the balance of probabilities, that those matters stated in the notice as constituting a breach of planning control, do not constitute a breach of planning control. Those matters may not constitute a breach of planning control if they, amongst other things: do not constitute development; are development for which planning permission has been granted; or, are lawful by virtue of being immune from enforcement action.
2. An appeal on ground (d) is made on the basis that, at the date the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters stated in the notice. The standard of proof is the balance of probabilities and the onus of proof rests with the appellant.
3. Section 171B of the 1990 Act sets out the relevant time limits for enforcement action to be taken. Section 171B(3) sets out that in the case of any other breach of planning control which is not building operations or the material change of use to a dwellinghouse, no enforcement action can be taken after a period of 10 years.

4. The alleged breach of planning control is a material change of use of the land to a scrap metal storage and processing facility. The relevant time period specified in the notice is therefore 10 years on the basis that the alleged breach falls under section 171B(3). It is thus necessary for the appellant to demonstrate, on the balance of probabilities, that the alleged material change of use took place on or before 27 July 2010 and subsisted for a period of 10 years or more.
5. The appellant does not argue that the material change of use to scrap metal storage and processing is not development for which planning permission is required. Moreover, at paragraph 4.2.1 of the appellant's statement of case, it is indicated that, "there does not appear to be any express grant of planning permission for the uses as expressed in the Council's enforcement notice." Thus, it seems that the appellant's principal argument on ground (c) is that the alleged use would have been lawful by virtue of being immune from enforcement action. Since this is largely relevant to the ground (d) appeal, I have taken both grounds of appeal together.
6. The appellant indicates that the land has been used as a scrap metal yard since 1953 when it operated as Fred Greens and Sons. It is then said to have been purchased by Kerry Firth in 1974 and ran as a scrap yard until 2010. In 2010 the land was then used as a garden centre for approximately 6 months before becoming vacant. Thereafter it is said it was brought back into use in 2014 as a scrap yard with ancillary aggregates sales. After that the appellant took the site over in 2016 and used it as a scrap yard.
7. The appellant has provided several aerial images in support of their case. The most recent is dated 15 May 2019. The buildings in place on the site at the time of my visit appear to be in situ at that date, as well as what appears to be scrap metal. Similarly, the image dated 19 April 2018 contains the buildings along with scrap metal, some of which seems to be stored in containers.
8. An aerial image dated 5 June 2016 shows the same buildings, however, there is no indication of any scrap metal being stored or processed on the land. Several piles of what appear to be aggregates are being stored whilst what seems to be a digger or grabber is working on a separate pile of aggregates.
9. An additional image is provided which is said to be dated 1 January 2009 and which the appellant says shows a scrap yard use. However, the clarity of the image is limited. Whilst the buildings are apparent, along with some vehicles, it is difficult to ascertain that it shows the storage or processing of scrap metals. Furthermore, the image shows a considerable amount of greenery and vegetation surrounding the site which one would not expect to see at that time of year. This calls into question whether the date shown on the image is accurate. Either way, I am not satisfied the image shows with sufficient degree of probability that the land was in use as a scrap metal storage and processing facility at that point in time.
10. An additional image is provided which is dated 21 September 2008. The appellant indicates that the image shows the land in use as a scrap yard. However, whilst the image shows several open storage containers on the land, it is difficult to ascertain what is stored in them due to the resolution of the image.

11. Finally, there are images which are said to be from 2003 and 2002 but again both are dated 1 January and show a considerable amount of greenery and vegetation surrounding the site. This casts doubt on whether the images are accurately dated. In any event, the resolution of the images is not of sufficient quality to establish what materials are being stored or processed on the land. Overall, I am not satisfied that the aerial images show on the balance of probabilities that the land has been in use as a scrap metal storage and processing facility for ten years or more prior to the issue of the notice.
12. The appellant indicates that the use of the land as a garden centre occurred in 2010. The appellant states that it lasted 6 months and as such was sufficiently brief as to render any such use de minimis. However, regardless of how long the garden centre use took place, the question is whether it resulted in a material change of use from the previous scrap yard use. That is, whether there was some significant difference in character between the activities which had gone on before. Case law has established that existing lawful use rights may be lost by a material change of use to another use.
13. The LPA has provided images dated July 2016 which shows the site displaying signage for 'Stairfoot Buildings and Garden Supplies. This image shows the same machinery and lack of waste metal products as shown in the aerial images from June 2016. This suggests that the use as a garden centre and aggregates business subsisted for much longer than the 6 months in 2010 suggested by the appellant. Moreover, an image provided by the LPA shows the gates of the appeal site in June 2012 displaying a notice which indicates that the scrap metal business at the site had relocated elsewhere in the Barnsley area.
14. Whilst details of the garden centre and aggregates use are limited, it seems to me that such use would have significantly different characteristics from the scrap metal business which preceded it and indeed the use which existed at the time the notice was issued. A garden centre and aggregates business would likely have resulted in the storage and movement of completely different materials to the scrap metal use, giving rise to different planning impacts in terms of noise and disturbance. In addition, vehicular movements would likely have contrasted between the two uses.
15. Thus, on the limited evidence before me, it seems to me that, on the balance of probabilities, an intervening material change of use from a scrap yard to a garden centre and aggregates use occurred at some point during the relevant 10 year period. Overall, I find that the appellant's evidence is not sufficiently precise or unambiguous to lead me to conclude otherwise.
16. The appellant argues the notice does not set out clearly what the previous use of the land was. However, whilst it is helpful if a notice refers to the previous use, it is not necessary for it to do so.
17. As a result, I find that the material change of use of the land to a scrap metal storage and processing facility did not occur on or before 27 July 2010 and continue uninterrupted without interruption for the 10 year period thereafter.
18. As a consequence, I conclude that, on the balance of probabilities, a material change of use of the land to a scrap metal storage and processing facility as stated in the notice did constitute a breach of planning control at the time the

notice was issued, since it had not acquired lawfulness due to the passage of time as set out in section 191(2)(a) of the 1990 Act.

19. As such, the appeals on grounds (c) and (d) fail.

The appeal on ground (a)

Main Issues

20. The main issues are:

- the effect of the development on the character and appearance of the area; and,
- the effect of the development on highway safety.

Character and Appearance

21. The appeal site is located adjacent to the A633 Wombwell Lane which I was able to see is a busy route. It lies in an area of distinctly commercial and industrial character, with uses such as large retail, car washes, fast food and light industrial prevalent. The site is located on raised ground close to the intersection of Wombwell Lane and Doncaster Road and as such is prominent with the street scene.

22. I was able to see from my site visit that large quantities of scrap metal, including that stored in containers, were clearly visible above the brick boundary wall of the site. I note the appellant's position that metal has accumulated more due to the circumstances of the Covid-19 pandemic. However, there is no indication from the appellant that typical pre-pandemic quantities of scrap metal were sufficiently low as to be fully screened from view. Indeed, I saw from my visit that the front boundary wall is not particularly high. On the site itself there was very little apparent organisation or arrangement of the metal storage. As such, given the height of the scrap metal storage and its visibility within the surrounding area, it appears as a discordant and incongruous feature within the street scene.

23. Neither party has indicated whether conditions relating to controlling the height or storage arrangements of materials would suitably overcome the harm. Therefore, in the absence of any evidence from the parties, I cannot say whether such conditions would be enforceable, or indeed whether it would be possible for the appellant to operate the site at all with such restrictions.

24. I conclude, therefore, that the development will have a harmful effect on the character and appearance of the area. As such, it conflicts with Policy D1, GD1 and Poll 1 of the Barnsley Local Plan 2019 (the LP) which require high quality design, seek to reflect, protect and improve the character of the local landscape, and prevent pollution to the environment.

Highway Safety

25. The appeal site is accessed from Wombwell Lane (A633) which I saw from my site visit carried two lanes of traffic in a single direction as it forms part of a one-way system close to the large intersection of the A635 and A633. Adjacent to the site access on the A633 is a bus stop. At the time of my site visit the road was carrying relatively high volumes of traffic. There is nothing

- in the evidence of any parties which indicates my observations were not representative of typical traffic conditions.
26. The appellant indicates that vehicles movements comprise on a daily basis around 1-2 artic lorries and around 25-30 vans. Beyond that it is said that the vast majority of trips are generated by cars and light goods vehicles.
 27. The appellant indicates that lorries can turn within the site and exit in a forward gear, as can all other vehicles visiting the site. However, I saw from my site visit that the quantity and arrangement of waste within the site meant that there was limited space for vehicles to turn. Indeed, at the time of my site visit a van had to reverse out of the site onto the road as there was insufficient space within the site for it to turn. It is difficult to see how HGVs or larger vans would be able to turn and exit in a forward gear. No evidence which demonstrates the site can accommodate sufficient turning space has been provided. As a result, it seems to me that vehicles entering the site will be unable to then exit in forward gear.
 28. Moreover, I was able to see from my visit that there is an issue with visibility from the access. Since Wombwell Lane is one way at this point, I agree with the appellant that only the visibility from the access to the right need be considered. Nevertheless, the Council refers in its reasons for issuing the notice to a white container within the site which restricts access. The appellant indicates that it is set back around 5m, outside of the requisite 'X' distance required under Manual for Streets (DfT 2007).
 29. However, those distances are designed for vehicles exiting access points in forward gear. In this case, the majority of vehicles, particularly those most likely to result in conflicts with road users, are likely to be exiting in reverse gear. This means drivers will need to exit the site looking across to their left to the right of the access with a visibility which is impeded by the container and the boundary wall. Even then, once beyond the wall, I was able to see from my site visit that visibility of oncoming traffic to the right is partially obscured by the bus stop and a lamppost. In addition, visibility is reduced substantially when a bus is stopped. Whilst I appreciate this will be a transient restriction, limited to short periods of time, it nevertheless contributes to the overall poor visibility conditions for vehicles exiting the site, whether in forward or reverse gear.
 30. I note the historical presence of the access and the bus stop but no evidence of the trip generation, or the nature of vehicles using the site for previous uses has been provided. I am therefore unable to ascertain whether the risk to highway safety from the previous use of the site was the same, greater or less than that here.
 31. I also note that Department for Transport accident data indicates that only two accidents have occurred within the area since 2010. However, a lack of previous accidents is not in itself justification for allowing conditions where there is a risk of accidents occurring, particularly since the character and movements of vehicles to and from the site since 2010 are not before me.
 32. Overall, on the evidence before me, I consider the development will likely give rise to a high risk for collisions between vehicles generated by the development exiting the site and vehicles using Wombwell Lane.

33. I conclude, therefore, that the development will have a harmful effect on highway safety. As a result, the development conflicts with Policy T4 of the LP which requires new development to be designed to provide all transport users within and surrounding the development with safe and secure access and movement.

Other Matters

34. I note the benefits the development will bring in terms of ensuring waste is recycled rather than being sent to landfill. I also note the business employs six people and there are economic benefits for the site to operate as a scrap metal and storage processing facility. However, the benefits of the development are at most limited, and either individually or collectively do not outweigh the harm which arises to the character and appearance of the area or highway safety.

Conclusions

35. For the reasons given above I conclude that the appeal on ground (a) should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Formal Decision

36. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

J Whitfield

INSPECTOR