



Appeal Decision

Site visit made on 2 November 2021

by Mark Harbottle BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29/11/2021

Appeal Ref: APP/E2734/C/21/3277978

The land situate and known as Unit 7 and part Unit 6 Hambleton Grove Industrial Estate, Hambleton Grove, Knaresborough, North Yorkshire

- 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 James Berry, Myers Group Ltd. against an enforcement notice issued by Harrogate Borough Council.
- The enforcement notice, numbered 21/00138/BRPC15, was issued on 19 May 2021.
- The breach of planning control alleged in the notice is failure to comply with a condition of a planning permission Ref 16/03991/FUL granted on 10 January 2017.
- The development to which the permission relates is a change of use from warehouse (B8) to Builder's Merchant (Sui Generis) with external racking and formation of car parking spaces.
- The condition in question is No 4, which states that: Notwithstanding the provision of any Town and Country Planning General Permitted or Special Development Order for the time being in force, the areas shown on plan number 14561-102 Rev B received by the Local Planning Authority 29 September 2016 titled 'Proposed site layout' for parking spaces, turning areas and access shall be kept available for their intended purposes at all times.
- The notice alleges that the condition has not been complied with in that vehicles, including articulated HGVs, visiting or delivering to the site are unable to use the internal turning area.
- The requirements of the notice are to comply in full with Condition 4 by (1) Maintaining at all times the access route and vehicle turning area, as hatched in yellow on the attached plan, clear of any items that prevent their access and egress by HGV and other vehicles; and (2) Removing all materials, equipment and racking from the vehicular access and turning area, save for the 'Proposed external racking' as shown on plan number 14561-102 Rev B as approved by planning permission 16/03991/FUL.
- The period for compliance with the requirements is one month.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended (the Act). 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 with a variation in the terms set out below in the Formal Decision.

Preliminary matter

1. A revised copy of the plan accompanying the notice (the plan), with the hatched area marked in a darker colour, was provided during the appeal. However, as the colour of the hatched area on the original plan is not a defect, error or misdescription, section 176(1)(a) of the Act does not empower me to correct it. I have therefore used the revised plan for reference only.

The appeal on ground (a)

2. Because the notice was issued under section 171A(1)(b) of the Act, the deemed planning application is to continue the builder's merchant use approved under reference 16/03991/FUL without complying with condition 4 of that permission. Success on ground (a) would result in a new planning permission identical to 16/03991/FUL, except for condition 4, being granted.

Main issues

3. The main issues are the effects of not keeping the parking spaces, turning area and access, shown on drawing 14561-102 Rev B (the drawing), available for their intended purposes at all times in terms of:
 - Highway safety.
 - Living conditions.

Reasons

Highway safety

4. The site is within an industrial estate accessed off a bend in Hambleton Grove, an otherwise residential road with on-street parking. The drawing includes the path of an articulated HGV turning within the site (the turning area), to demonstrate that such vehicles would be able to enter and leave in forward gear. While the turning area is on a part of the drawing annotated 'external storage, deliveries & vehicle turning area', condition 4 overrides that. It thereby precludes obstruction of the turning area by any other use or activity, including external storage.
5. The failure to maintain the turning area for that purpose alone, through encroachment by external storage, has resulted in large HGVs being reversed into the site or unloaded on the highway. The safety of highway users is a matter that must be afforded significant weight.
6. The appellant has sought to address this by a range of measures, including using a banksman to guide vehicles entering the site, moving surplus stock to other locations, and directing larger HGVs to other stores. While these measures may have improved matters, the appellant acknowledges that some of them are not sustainable in the longer term.
7. I saw a rigid body HGV turn within the site. If no larger, or articulated, vehicles were to visit the site, and if no further encroachment by storage took place, the concerns that led to the notice being issued might be alleviated. However, and while I have no doubt the appellant has made genuine efforts to ensure suppliers do not send large HGVs to the site, that cannot be guaranteed in perpetuity. If an articulated HGV were to enter the site as it is now, and despite the appellant's best endeavours, it would be unable to turn and would need to reverse onto the highway. Furthermore, even if an upper limit on HGV size could be guaranteed, the relevant turning area that would need to be maintained has not been identified and therefore cannot be secured.
8. While an increase in storage may be accompanied by further HGV movements, no increase has been quantified. The highway authority had advised that the builder's merchant use would result in fewer HGV movements than the

previously permitted warehouse use. As such, no increase in HGV movements over what was previously considered acceptable has been identified.

9. Local people have questioned the safety of placing external racking next to the railway line and the public footpath that adjoin the site. While some footpath users may be genuinely concerned about this, no objection from the railway network operator or the highway authority has been presented.
10. The inability of HGVs to turn within the site has had significant impacts on the local road network in terms of congestion and highway safety. It has not been demonstrated that those impacts can be mitigated to an acceptable degree and cost effectively. The proposed removal of condition 4 is therefore contrary to Part 9, paragraphs 110 and 111, of the National Planning Policy Framework (the Framework) and is unacceptable.

Living conditions

11. The appellant's efforts, noted above, may have reduced the incidents of HGVs reversing into or out of the site, with attendant reversing alarms, or being unloaded on the highway. However, the fact that articulated HGVs may still arrive at the site, despite the appellant's best efforts, means that their effect on living conditions through inconvenience and noise cannot be disregarded.
12. It is therefore unavoidable that the continuation of the builder's merchant use without complying with condition 4 would result in significant adverse impacts on the amenity of occupiers and neighbours. This would be contrary to policy HP4 of the Harrogate District Local Plan 2014 – 2035 and Part 12 of the Framework.

Other matters

13. The appellant states that, if all external storage areas are removed, they will be forced to close the branch with the loss of 10 jobs. However, compliance with the notice would not restrict external storage to the external racking area shown on the drawing. It would instead preclude it within the areas shown or required for parking, turning and access and so would not necessarily require all external storage to be removed.
14. A combination of exceptional factors, including supply chain and haulage issues, has contributed to the growth in external storage. However, those circumstances are unlikely to continue indefinitely and therefore cannot justify the permanent loss of the parking spaces, turning area and access that could arise if the use were to continue without condition 4 in place.
15. Some public comments suggest the site should not have been given planning permission for industrial use due to the access via Hambleton Grove. However, that was not a reason for the notice being issued and it is therefore beyond the scope of this appeal.

Conclusion on ground (a)

16. For the reasons given, the continuation of the builder's merchant use without complying with condition 4 is unacceptable in terms of highway congestion and safety and living conditions. Accordingly, the appeal on ground (a) should fail.

The appeal on ground (f)

17. The requirements of the notice relate to a yellow hatched area on the plan, described as 'the vehicular access and turning area' and which excludes the parking area and area occupied by the external racking shown as proposed on the drawing.
18. In contrast, condition 4 refers to 'parking spaces, turning areas [sic] and access' shown on the drawing but only the parking spaces and a turning area are marked on it. Nevertheless, there can be little doubt that the westernmost part of the site edged in red, the strip between Hambleton Grove and the parking spaces, is part of the access. The hatching on the plan extends this strip past the parking area, widening to include the land needed to manoeuvre in and out of the parking spaces. However, it is less clear whether every external area beyond the parking area, excluding the turning area and the proposed external racking, was intended for access, or reserved for that purpose alone by the condition.
19. It is therefore possible that the objective of condition 4 could be achieved by removing external storage from less than the entire yellow hatched area. However, no alternative area that would allow suitable safe access to be maintained through the site has been identified. As a result, it has not been demonstrated that the suggested alternative of only requiring the turning area to be cleared of external storage would safeguard access to and from it.
20. Accordingly, and in these circumstances, lesser steps that would overcome the breach of planning control have not been identified and it has thus not been demonstrated that the requirements of the notice are excessive.
21. For these reasons, the appeal on ground (f) should fail.

The appeal on ground (g)

22. While it is suggested that more than a month is reasonably required to remove all the external storage from the site, the notice does not seek all external storage to cease. Rather, it only requires any storage that encroaches into the vehicular access and turning area to cease. It has thus not been demonstrated that compliance with the notice could not be achieved within the stated period.
23. Similarly, while the appellant considers the branch could not operate without any external storage areas, that is based on an over-statement of what the notice requires.
24. For these reasons, it has not been demonstrated that a period of one month is not a reasonable period. Although the start of the period is not defined in the notice, it cannot be other than the date on which the notice takes effect, now the date of this Decision.
25. Subject to a variation of the notice to address this point, the appeal on ground (g) should not succeed.

Conclusion

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

Formal Decision

27. It is directed that the enforcement notice is varied by the deletion of the words "1 month" and the substitution of the words "1 month from the date on which this notice takes effect" in section 5.
28. Subject to this variation, 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 Act.

Mark Harbottle

INSPECTOR