



Appeal Decision

Site visit made on 5 January 2022

by **E Griffin LLB Hons**

an Inspector appointed by the Secretary of State

Decision date: **21st January 2022**

Appeal Ref: APP/J3015/C/21/3281556

Former Manor Garage, 365 Nottingham Road, Toton, Nottinghamshire, NG9 6EG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Graham Rigley against an enforcement notice issued by Broxtowe Borough Council.
- The notice was issued on 29 July 2021.
- The breach of planning control as alleged in the notice is: Without the benefit of planning permission, the siting of storage containers and portacabins on the land and operation of a storage business.
Without the benefit of planning permission, the operation of a car wash/valeting business and construction/siting of associated structures.
Without the benefit of planning permission, the siting of a hot food trailer trading from the site.
- The requirements of the notice are to:
 - (i) Permanently cease the operation of the storage business from the land
 - (ii) Permanently cease the use of the land in connection with the car wash/valeting business
 - (iii) Permanently remove all of the storage containers, portacabins, structures, plant and vehicles from the land.
 - (iv) Permanently cease the operation of sales from the hot food trailer on site.
 - (v) Permanently remove the hot food trailer from the site.
- The period for compliance is 30 days for requirements (i)(ii)(iv) and (v) and 60 days for requirement (iii).
- The appeal is proceeding on the grounds set out in section 174(2)(f) and (g) of the Town and Country Planning Act 1990 (the Act) as amended.

Summary of Decision: The appeal succeeds to a limited extent and the enforcement notice is upheld as varied in the terms set out below

Decision

1. It is directed that the enforcement notice is varied by:

1)Deleting the breach of planning control in full and substituting it with

“Without planning permission, the material change of use of the land to a mixed use for use as a storage business including the siting of storage containers and portacabins on the land, use as a car wash/valeting business with construction/siting of associated structures and use for the siting and operation of a hot food trailer.

2)Deleting the requirements in full and substituting them with the following

(i) Cease the use of the land for use as a storage business.

- (ii) Remove all the storage containers, portacabins, structures, plant and vehicles used in connection with the storage business use from the land.
- (iii) Cease the use of the land for a carwash/valeting business.
- (iv) Remove all the storage containers, portacabins, structures, plant, and vehicles used in connection with the car wash/valeting business use from the land.
- (v) Cease the use of the land for the operation of a hot food trailer.
- (vi) Remove the hot food trailer from the land.

3) Deleting the time for compliance in full and substituting it with

The period of compliance with requirements (i)(iii)(v) and (vi) is 30 days. The period of compliance for requirement (iv) is 60 days. The period of compliance for requirement (ii) is 4 months.

2. Subject to these variations, the appeal is dismissed and the enforcement notice is upheld.

Procedural Matter

3. The appellant lodged two appeals on the same day against the same notice. Appeal Ref: APP/J3015/C/21/3281561 was subsequently closed as a duplicate but I have taken into account the information provided in that appeal form in respect of ground (g) in the interest of fairness.
4. The appellant refers to not being given an opportunity to submit a planning application before the notice was served although the Council disagrees and states that there was extensive dialogue with the appeal site owner and the appellant since the Council became aware of the storage use in October 2020.
5. However, the appellant has chosen not to appeal under ground (a) which would have been a request for planning permission to be granted. In the absence of a ground (a) appeal, the appeal is proceeding on the limited grounds (f) and (g).

The Notice

6. Before I address the grounds of appeal, I must consider whether the enforcement notice is in good order. The alleged breach does not specifically refer to a material change of use but does include three uses namely use of the land for a storage business with associated structures, use for car wash/valeting with associated structures and the siting of a hot food trailer.
7. The allegation is therefore more accurately described as "Without planning permission, the material change of use of the land to a mixed use for use as a storage business including the siting of storage containers and portacabins on the land, use as a car wash/valeting business with construction/siting of associated structures and use for the siting and operation of a hot food trailer."
8. There is no operational development relating to the siting of a hot food trailer as the trailer is designed to be moved around locations. However, the notice does require the removal of storage containers, portacabins, structures, as well as plant and vehicles used in connection with the other uses. Where use is

alleged, case law¹ has established that a notice can require the removal of structures which have facilitated that use and the relevant immunity period is then 10 years not the 4 years that applies to operational development. However, as there is no appeal under ground (d) before me with regard to the stated period of immunity of 4 years, there is no injustice caused in amending the wording to refer specifically to the use which has a longer immunity period in any event.

9. The notice as drafted does not separate the requirement to remove items used in connection with the storage business from the items used in connection with the carwash/valeting business. The lease provided by the sole appellant to prove he had sufficient interest in the land to appeal shows that he is the tenant of the storage business area to the rear of the appeal site only. In making an appeal, the appellant has not referred to any matters relating to the car wash business or the hot food trailer.
10. Requirement (iii) can therefore be separated into two similar requirements as there is an appeal which relates to only part of an existing requirement. The use of the word "permanently" is superfluous in the requirements and can be deleted. The changes to the wording of the allegation and the requirements provide clarity without altering the substance of the notice and I am satisfied that the changes do not cause injustice to any party. I will amend the wording of the notice and the requirements and amend the times for compliance wording so that the numbering matches the requirements.

An appeal under ground (f)

11. This ground alleges that the requirements of the notice are excessive. Section 174(2)(f) of the Act states that an appeal may be made on the ground that the steps required by the notice to be taken, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach. Although the appellant ticked box (f) on the appeal form, he has not indicated why the requirements are excessive under this ground as he has only provided information with regard to ground (g) which relates to the period for compliance.
12. The purpose of the notice is to remedy the breach of planning control as all of the requirements relate to ceasing the various uses at the appeal site and removing items used in connection with those uses to restore the land to its condition prior to the breach of planning control taking place. The requirements do not, therefore, exceed what is required to remedy the breach. The appeal under ground (f) therefore fails.

An appeal under ground (g)

13. An appeal under ground (g) is that the period for compliance is too short. The period for compliance with the notice for the cessation of all of the uses is not part of the appellant's ground (f) appeal. His appeal relates to the requirement to remove all the storage containers, portacabins, structures, plant, and vehicles from the land in connection with the storage business which has a compliance period of 60 days.

¹ Murfitt v Secretary of State for the Environment (1980) 40 P. & C.R 254

14. In his appeal forms dated August 2021, the appellant initially asked for a period of compliance of 6 months but in September 2021, he asked for that period to be extended to 10 months. He referred to haulage delays due to driver shortages and the difficulties of removing over 20 storage containers of over 3 tonnes in weight. He also referred to personal circumstances but limited information is provided. No details are provided as to what practical steps the appellant has actually taken to comply to date although I accept that there have been national issues with haulage driver shortages.
15. Although the appellant appealed under grounds (f) and (g), no information was provided for ground (f) and the appellant's sole reason for appealing the notice was therefore to ask for more time to comply under ground (g). In these circumstances, I can take into account the amount of time that the appellant has already had to comply since the issue of the notice as the appellant knew that in the absence of any other grounds of appeal, the notice would need to be complied with and the containers and other items relating to his storage business would need to be removed.
16. The appellant has therefore already had almost 6 months to make appropriate arrangements since the notice was issued. The Council has referred to the appellant having longer to make arrangements as he has been on the land for some time without planning permission but the appellant could have applied for retrospective permission through the appeal process. A further 10 months to comply from the issue of the Decision Letter would, however, be excessive.
17. Nevertheless, I do consider that 4 months would be a proportionate balance between the appellant's arguments and the public interest of achieving compliance with the notice. The appeal under ground (g) therefore succeeds to a limited extent. I will vary the time for compliance for amended requirement (ii) to allow for a compliance period of 4 months rather than 60 days.

Conclusion

18. For the reasons given above, I conclude that the appeal should not succeed. I shall vary the notice prior to upholding it.

E. Griffin

INSPECTOR