



Appeal Decision

Site visit made on 21 December 2021

by AJ Steen BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 January 2022

Appeal Ref: APP/U2235/C/20/3255448

S & B Car and Van Hire Limited, Forstal Lane, East Farleigh, Maidstone, ME15 0QE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by S & B Car and Van Hire Limited against an enforcement notice issued by Maidstone Borough Council.
- The notice was issued on 1 June 2020.
- The breach of planning control as alleged in the notice is without planning permission, the unauthorised change of use of the land to the use for commercial vehicle hire considered to be a Sui Generis use, with integral operational development including the laying of hardstanding, erection of boundary treatments and siting of an office unit. Which is contrary to both national guidance and local development policies.
- The requirements of the notice are to:
 - (i) Cease the use of the land for the purposes of commercial car and van hire within the red line of the attached plan.
 - (ii) Remove hard surfacing, to be broken up and removed from the land, located in the approximate area marked with crosshatching on the attached plan, and to return land to its previous condition/levels by ripping the ground in two directions, re-spreading topsoil over that land to a depth of 150mm (or more where necessary) to fill in any depression and grading.
 - (iii) Remove from the land the modular office building, located in the approximate area marked with crosshatching on the attached plan.
 - (iv) Remove from the land the brick wall enclosure, which is integral to the unauthorised use.
 - (v) Remove all materials, rubbish and debris as a result of compliance with steps (i), (ii), (iii), and (iv) above from the Land.
- The period for compliance with the requirements is: six months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c) and (g) 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 Decision: The appeal is dismissed and the enforcement notice is upheld with a correction and variation in the terms set out below in the Formal Decision.

Preliminary Matters

1. The arguments put forward relating to the appeal under ground (c) indicated that the requirements of the notice in relation to the hard surfacing should be amended. As a result, I consider there is a hidden appeal under ground (f). I have raised this with the parties and have included the points raised in a section on ground (f) that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary.
2. The plan attached to the enforcement notice shows an area crosshatched that the enforcement notice suggests is hard surfaced. The appellant has suggested the area identified on the plan is larger than the actual area covered in hard

surfacing and supplied an alternative plan. The Council have agreed that the plan attached to the notice should be substituted by the plan supplied by the appellant. I see no reason to disagree with this conclusion and shall correct the notice in this regard.

3. A revised National Planning Policy Framework was published during the course of the appeal. The Council and appellant were given the opportunity to comment and I have taken its contents into account in coming to my decision.
4. My attention has been drawn to a draft Local Plan Review. I have limited information as to the exact stage it has reached, the extent of outstanding objections or whether the policies concerned will be considered as consistent with the Framework. Consequently, I am only able to give it limited weight in my decision.

The Appeal on Ground (c)

5. An appeal on this ground is that “those matters” (the matters stated in the alleged breach of planning control) do not constitute a breach of planning control. The burden of proof for this ground is on the appellant, with the relevant test of the evidence being on the balance of probability.
6. The appeal on this ground relates to the hardstanding and wall referred to in the breach of planning control and required to be removed in paragraphs 5(ii) and (iv) of the requirements of the enforcement notice. The hardstanding comprises an area of tarmac in the area hatched on the revised enforcement notice site plan. That area is used for parking of vehicles by S & B Car and Van Hire Limited. The wall is at the front of the hardstanding, to either side of the access. The re-surfacing of the vehicle parking area and erection of the wall constitute development within the meaning of Section 55 of the Act for which planning permission is required. No planning permission has been granted by the Council for the re-surfacing of the vehicle parking area or the wall.
7. The appellant suggests that the hardstanding benefits from the planning permission granted by Class E, Part 9, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). Part 9 deals with development related to roads. Class E enables the maintenance or improvement of private ways. However, the surfacing covers a much wider area than the private way leading to the land at the rear. It is over the vehicle parking area, which is a parking area that does not constitute a private way. As such, it does not benefit from the planning permission granted by Class E, Part 9, Schedule 2 of the GPDO.
8. My attention has been drawn to a proposal for a tourism use for camping and caravanning with associated utility block and office/store approved under planning permission reference 13/1607. The access to that proposal was over the site subject of this appeal. The Council accept that a form of enclosure was proposed in approximately the location of the wall referred to in the enforcement notice. However, the Council state that details of the design were not submitted and were not provided with this appeal. The wall extends away from the access drive, part way on the route from Forstal Lane to the area for camping and caravanning and appears to be outside the area outlined in red on the plan submitted with 13/1607. It is on the edge of the hardstanding provided for parking of hire cars and vans. As a result, the wall does not appear to be a form of enclosure in relation to any development subject of that planning

permission. On that basis and on the balance of probability, the wall does not constitute part of the development for which planning permission was granted under reference 13/1607.

9. It is suggested that the wall benefits from the planning permission granted by Class A, Part 2, Schedule 2 of the GPDO. That enables the erection of a gate, fence, wall or other means of enclosure. The wall is a form of enclosure for the vehicle parking area subject of this enforcement notice. It is accepted that the use of the vehicle parking area does not benefit from planning permission and I have concluded that the surfacing is not subject of any planning permission such that it is not lawful. There is reference to previous surfacing in the area resulting from when some agricultural buildings were demolished, but it is not clear whether this was over the whole or part of the area or whether the wall encloses that. Consequently, on the balance of probability the wall does not benefit from planning permission granted by Class A, Part 2, Schedule 2 of the GPDO.
10. Since no planning permission has been granted for the development described in the enforcement notice it thereby constitutes a breach of planning control.
11. For these reasons, I conclude that the appeal under ground (c) should fail.

The Appeal on Ground (a) and the Deemed Planning Application

Main issues

12. The main issues are:

- the effect of the unauthorised change of use of the land and associated operational development for commercial vehicle hire on the intrinsic character and beauty of the landscape; and
- whether the proposal is in a suitable location in terms of its relationship with adjacent settlements.

Reasons

Intrinsic character and beauty of the landscape

13. Forstal Lane is on the edge of the settlement of Coxheath with development in the built up area on one side and countryside on the other. The appeal site comprises a predominantly open area, with an access from Forstal Lane leading to the unauthorised hardstanding used for parking vehicles. The open grassed area of the majority of the appeal site contributes to the countryside setting of Coxheath.
14. I note that beyond the appeal site is an area containing a number of touring and static caravans, along with former agricultural buildings and there are other small groups of buildings and development on this side of the lane. This has resulted in a sporadic form of development that affects the intrinsic character and beauty of the landscape.
15. The development comprises an area of hardstanding used for parking of vans and cars along with a wall to the front and modular office building. It introduces additional built development along with a use that appears incongruous within the countryside and the surrounding area.

16. A building on the hardstanding appears to pre-date the creation of the hardstanding and is not referred to in the enforcement notice. The hedge along Forstal Lane restricts views to the hardstanding, wall and vehicle parking use to some extent. Further landscaping could be provided that, over time, would further reduce the visibility of the site. Residential development is taking place on Forstal Lane near the site, but on the other side of the lane. Nevertheless, these factors would not overcome the harm arising from the development to the intrinsic character and beauty of the surrounding landscape.
17. For these reasons, I conclude that the wall, hardstanding and use for parking vehicles harm the intrinsic character and beauty of the landscape. As such, they are contrary to Policies SS1, DM3, DM30 and SP17 of the Maidstone Borough Local Plan (LP) and the National Planning Policy Framework (the Framework) that recognise the intrinsic character and beauty of the countryside and seek to protect the rural character of the borough.

Location in relation to adjacent settlements

18. The appeal site is located a short distance outside the boundary of Coxheath, which is described as a larger village within the LP. I understand the Local Plan Review indicates it may be defined as a rural service centre in the future. The Framework supports the growth and expansion of businesses in rural areas and the development and diversification of agricultural and other land based rural businesses. Policies SS1, SP17 and DM30 of the LP enable small scale employment at appropriate locations to support the rural economy. They seek to direct development to towns and villages where employment, services and facilities are located together with a range of transport choices.
19. The appeal site is a relatively remote location that requires travel from the urban areas to access the car and van hire service. The development comprises a new area of hardstanding, albeit around an existing access track, with the business having relocated from the urban area. As such, it is not an expansion, nor does it comprise diversification, of an existing rural business. Although close to Coxheath and contributing to the rural economy, it is remote from other services and facilities without a range of transport choices.
20. For these reasons, on balance I conclude that this is not a suitable location for the car and van hire business in terms of relationship with adjacent settlements. As such, it is contrary to Policies SS1, SP17 and DM30 of the LP and the Framework.

Other matters

21. I understand that there is a general problem with identifying suitable sites for van and car hire businesses within Maidstone. This use competes with other uses for sites, including residential development. As a result, sites are difficult to identify. Nevertheless, I have limited evidence as to what form the search for sites has taken, although I note reference to the Council assisting with the search for a site. Consequently, this does not overcome the conflicts with Local Plan policies that I have identified.
22. My attention has been drawn to an appeal decision¹ relating to the use of land for stationing of caravans along Forstal Lane. That related to a different form of development that had a different effect on the intrinsic character and beauty of

¹ Appeal reference APP/U2235/W/19/3236142

the landscape. There are commercial and industrial uses at Orchard View for the storing of cars, vehicle spares and paint spraying for which the Council have issued a Lawful Development Certificate reference MA/10/1725. However, that relates to the use of buildings and adjacent yard. Consequently, I consider these cases differ from that in front of me. In any event, I need to consider this case on its individual merits.

Conclusion

23. For the reasons set out above, I conclude that on balance the development does not accord with the development plan. The appeal on ground (a) therefore fails.

The Appeal on Ground (f)

24. An appeal on this ground is that the steps required by the notice to be taken, or the activities required by the notice to cease, 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. In this case, the requirements seek to cease the parking for car and van hire and remove the hard surfacing, wall and modular office building in order to restore the land to its condition before the breach took place. Clearly, therefore, the purpose of the notice requirements is to remedy the breach of planning control.

25. The appeal on this ground relates to the requirement to remove the hard surfacing. This requires the surfacing to be broken up and removed, then return the land to its previous condition and levels. It describes how this should take place. However, the hardstanding is partially in the location of a previous access and I understand there may have been some previous hardstanding as agricultural buildings had been in this location in the past. Consequently, the notice exceeds what is necessary in relation to the works specified on the location of that access. As a result, it is necessary to vary paragraph 5.(ii) of the notice to state:

Remove hard surfacing from the land, located in the approximate area marked with crosshatching on the attached plan, and return the land to its previous condition and levels.

26. For these reasons, I conclude that the appeal under ground (f) should succeed.

The Appeal on Ground (g)

27. An appeal on this ground is that the period specified in the notice for compliance falls short of what should reasonably be allowed.
28. The compliance period on the enforcement notice is six months, but the appellant suggests 18 months would be more appropriate. I understand that the appellant has been searching for an alternative site for a substantial amount of time but has been unsuccessful. Nevertheless, there is limited evidence to demonstrate what form that search has taken. I accept that the previous site used by S & B Car and Van Hire Limited may have been owned by the Council, but it is not their responsibility to find land for a private company. Given the limited evidence I consider that six months should be sufficient to enable the search for a site to take place.

29. A new site may need to be adapted prior to use, although it is unclear how much work may be required for that adaptation. I note that the parking area at present is a simple area of hardstanding with space for the modular office building and parking. On balance, I do not accept that additional time would be required to adapt an alternative site.

30. For these reasons, the period for compliance within the enforcement notice does not fall short of what should reasonably be allowed. Consequently, I conclude that the appeal under ground (g) should fail.

Formal Decision

31. It is directed that the enforcement notice is corrected and varied by:

the substitution of the plan annexed to this decision for the plan attached to the enforcement notice; and

the deletion of the requirement at paragraph 5.(ii) of the requirements of the enforcement notice and substitution of the words "5.(ii) Remove hard surfacing from the land, located in the approximate area marked with crosshatching on the attached plan, and return the land to its previous condition and levels".

32. Subject to the correction and variation, the appeal is dismissed, 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.

AJ Steen

INSPECTOR

ANNEX

