

Appeal Decision

Site inspection on 24 February 2022

by Graham Self MA MSc FRTPI

Inspector appointed by the Secretary of State

Decision date: 3 March 2022

Appeals References: APP/D1780/C/21/3285044, 3285045, 3285046 & 3285047

Site at: The Sycamores, Oakley Road, Southampton SO16 4LJ

- The appeals are made by Mr Paul Brett, Mrs Katharine Brett, Mr Anthony Rudder and Mr Dominic Brown under Section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice issued by Southampton City Council.
- The notice was dated 22 September 2021.
- The breach of planning control alleged in the notice is: Without planning permission, the material change of use of the Land from residential use to a mixed use comprising residential use and use for the siting of a hot food catering van.
- The requirements of the notice are:
 - i) Cease using any part of the Land for the stationing of a hot food catering van, and
 - ii) Remove from the land the hot food catering van brought onto the Land for the purpose of that use.
- The period for compliance is 28 days.
- The appeal was made on ground (b) as set out in Section 174(2) of the 1990 Act. Since the prescribed fees have not been paid within the specified period, the applications for planning permission deemed to have been made under Section 177(5) of the Act do not fall to be considered.

Summary of Decision: The enforcement notice is corrected and varied. The appeals are dismissed and the notice upheld as corrected and varied.

Procedural Matters and Site Inspection

1. There are four appeals with different reference numbers because four people appealed against the same enforcement notice. The appeals were all made on the same ground so I am considering them together as in effect one appeal.
2. None of the appellants, nor anybody representing them, were present at the site at the time arranged for the inspection. However, shortly afterwards two people who identified themselves as Mr Rudder and Mr Brown arrived at the site. They were apparently not aware of the arrangements for the inspection. It seems that Mr Brett has been the leader in lodging the appeal and has also acted as agent for the other appellants, although they might not have been fully aware of this. Be that as it may, since two of the appellants were present (as well as the council's representative), I carried out the inspection as a normal "accompanied"

inspection since Mr Rudder and Mr Brown were able to act as representatives for the other appellants.

3. The catering van referred to in the enforcement notice was not on the site at the time of my inspection. It was standing on a raised forecourt area next to premises nearby on the opposite side of Oakley Road.

The Enforcement Notice

4. The allegation in the enforcement notice is flawed. The mere "siting" of a moveable object on land (or "stationing" as described in the requirements part of this enforcement notice) is not a sufficient or satisfactory allegation, because it does not properly define the nature of the use of the land for the purposes of planning law. To do so, the reason for or purpose of the siting or stationing must be specified.¹
5. The enforcement notice can be suitably amended (using the powers available to me under Section 176(1) of the 1990 Act) to allow for this flaw without causing any injustice. It is clear from the available evidence that the catering van has been placed on the site for use for "catering" purposes, including preparing and selling food and drink.
6. I have some doubts whether "residential" is a correct description of the previous use of the land, as specified in the words "from residential use" in the allegation. At one time, the use of the appeal site was evidently mixed, and included use as a builder's yard as well as residential. Indeed, the council's statement itself refers to the previous use as "residential and builder's yard use". I saw several items on the site which did not appear to be associated with residential use or with use as a builder's yard. These included a pick-up vehicle body shell, a Ford Transit motor caravan, a breakdown recovery truck and trailer (with a car on the trailer), and a Volkswagen van.
7. It is possible that the site may be in mixed use for residential use and for some form of non-residential use involving vehicles. However, in the absence of any clear evidence about the non-residential activity, I have decided to leave the description of the unauthorised use unaltered. It is not necessary for an enforcement notice alleging a material change of use to specify the previous or "from" use, so I shall delete the reference to the previous use.
8. I have also considered whether to correct the term "van", which normally refers to a vehicle which is capable of being driven and is powered by its own engine. The item subject to this enforcement action has a towbar, does not have any means of independent propulsion, and would perhaps be more accurately described as a "catering trailer". However, the term "van" has not caused any misunderstanding among the appellants, who themselves refer to "this van".² I have therefore decided that it is not necessary to amend this aspect of the enforcement notice.

¹ One reason for this is that the relevant policies and other aspects of planning control are likely to vary depending on the purpose of the "siting" or "stationing".

² I am also aware that the word "van" originated in English as a contraction of "caravan", which in turn usually (though not always) refers to a trailer-type vehicle.

Ground (b)

9. This ground of appeal claims that what is alleged in the enforcement notice has not occurred.
10. The appellants have contended that the land in question "is already commercial ground", that it is private property, and that if food were no longer served "the van [would be] just a trailer", left as a storage pitch and moved when the appellants had functions. Another contention is that the land is "registered as commercial", so the appellant should be able to store what they like on it.
11. Those arguments do not hold water. The fact that land is private property does not mean that it is excluded from planning controls. The claims about "commercial ground" being "registered as commercial land" are presumably intended to refer to the past planning permission for mixed residential and builder's yard use. But that does not mean that an additional use, which has a material impact on the area's appearance, amenities and highway safety, can be added without planning permission.
12. The suggestion about stopping the activity of serving customers at the site and leaving the van in place as a storage pitch is misguided - there is no planning permission for such storage use, there is no appeal on ground (f) to claim that the requirement to remove the van is excessive, and no case has been made out for such storage.
13. In summary, there is clear evidence that the catering van or trailer has been placed on the land, in the northernmost part of the appeal site next to Oakley Road. Photographic and written evidence shows that a use involving preparing and selling food and/or drink has been carried on. I conclude that what is alleged in the enforcement notice (as corrected) has occurred, so the appeal on ground (b) fails.
14. Some of the appellants' arguments might more appropriately have been addressed to an appeal on ground (c) of Section 174(2) rather than ground (b). (Ground (c) is a claim that the matters alleged in an enforcement notice do not constitute a breach of planning control.) This ground was not pleaded, but to avoid any possible doubt I record here that if it had been pleaded it would also have failed.

Requirements and Effect of the Notice

15. In paragraphs 4-8 above I commented on the allegation. Similar points apply to the requirements of the notice, which should parallel the amended allegation. Since an amendment to the allegation in an enforcement notice is normally treated as a "correction" and an amendment to the requirements as a "variation", I am directing that the notice be both corrected and varied.
16. I do not know when the catering van was moved from the appeal site and placed on the site on the opposite side of Oakley Road. The fact that the van was not on the appeal site at the time of my inspection does not mean that the enforcement notice ceases to have effect - it remains effective.

Formal Decision

17. I direct that the enforcement notice be corrected and varied in the following ways:
 - (1) by deleting the text of the allegation after the words "Without planning permission" and substituting: "the material change of use of the land to mixed use including residential and use for stationing a catering van for the purposes of selling food and drink".
 - (2) by deleting sub-paragraphs (i) and (ii) of the specified requirements and substituting: "Cease the use described in the allegation above and remove the catering van from the land"
18. Subject to the correction and variation above I dismiss the appeals and uphold the notice as corrected and varied.

G F Self

Inspector