



Appeal Decision

Site visit made on 21 June 2022

by Jessica Graham BA (Hons) PgDipL

an Inspector appointed by the Secretary of State

Decision date: 6 July 2022

Appeal Ref: APP/W3330/C/21/3289195

Land at Creech Paper Mills, Mill Lane, Creech St Michael, Taunton, TA3 5PX

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended ("the 1990 Act"). The appeal is made by South West Crane Hire against an enforcement notice issued by Somerset West and Taunton Council.
- The notice was issued on 2 November 2021.
- The breach of planning control as alleged in the notice is "the use of land as a crane hire depot".
- The requirements of the notice are to:
 - Cease the use of the Land for the operation of a crane hire company
 - Remove from the Land all plant, vehicles, storage containers and machinery connected with the use of the Land for the operation of a crane hire company.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2)(f) and (g) of the Town and Country Planning Act 1990 as amended

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld, with correction and variation, in the terms set out below in the Formal Decision.

Background

1. The appeal site is a wedge-shaped area of land at the western end of Creech Mills Industrial Estate. In January 2020 an application¹ for planning permission for the change of use of the land to a crane hire depot was refused by the Council. This refusal was subsequently upheld at appeal ("the 2021 appeal")².
2. The appeal site was previously occupied by Upstream Pipeline Services. The Appellant contends that this former occupier used the land as a "sui generis vehicle depot" between 2001 and 2016 such that, the time limit available for taking enforcement action having expired, that use became lawful.³ This contention is the subject of an application for a certificate of lawfulness of existing use (LDC), submitted by the Appellant to the Council on 2 November 2021.⁴ That application has not yet been determined. However, since the Council's decision on the LDC application does not - for reasons I shall come to below - affect the outcome of this appeal against the enforcement notice (and vice versa), this need not delay my determination of the appeal.

¹ Ref 14/20/0008

² Ref APP/W3330/W/21/3274593

³ Per the time limits for enforcement action set out at s.171B of the 1990 Act.

⁴ Ref 14/21/0040/LEW

The terms of the notice

3. The breach of planning control alleged by the notice is “the use of land as a crane hire depot.” However, *use of land is not in and of itself development, such as would necessarily require planning permission: for development (and thus, potentially, a breach of planning control) to have taken place, there must have been “the making of a material change in the use of the land”*⁵. I appreciate that this may appear a somewhat arid and pedantic point, but it is important that the allegation should be properly framed, as this shapes the requirements that may legitimately flow from it.⁶
4. In this case, there is no dispute that irrespective of whether or not the previous use of the land as a “sui generis vehicle depot” was lawful, the change from that use to the current use as a crane hire depot was material. That was the conclusion of the Inspector who determined the 2021 appeal, and it is not challenged by the Appellant in this appeal. It is clear from the written representations before me that the Council is seeking to enforce against that material change of use, and that the Appellant’s professional representative has understood this point. I am satisfied that I can correct the wording of the notice accordingly, without prejudice to either party.

The appeal on ground (f)

5. S.173 of the 1990 Act sets out the two purposes that the requirements of an enforcement notice can seek to achieve. The first is to remedy the breach of planning control which has occurred, and the second is to remedy any injury to amenity which has been caused by the breach. Here, the notice requires the cessation of the unauthorised use and the removal from the land of items associated with that use, so it is clear that the purpose of the notice is to remedy the breach of planning control.
6. The Appellant’s case is that the requirements of the notice exceed what is necessary to remedy the breach of planning control, since there is currently a lawful use that can be continued within the site; that use being the previous use as a “sui generis vehicle depot” which is currently the subject of the LDC application. The Appellant seeks the variation of the notice to require that “the use of the site return to that of a lawful sui generis vehicle depot.”
7. I am not persuaded that any such variation is needed. The requirements of the notice cannot go beyond remedying the breach; there is no scope to require reversion to the lawful use, or to any other specified use. In any event, the notice does not operate to prevent any existing lawful use of the appeal site. It simply requires the current unauthorised use – for the operation of a crane hire company – to cease. Further, protection for any existing lawful use is provided by s.57(4) of the 1990 Act, which states: *Where an enforcement notice has been issued in respect of any development of land, planning permission is not required for its use for the purpose which (in accordance with the provisions of this Part of this Act) it could lawfully have been used if that development had not been carried out.*
8. The question of whether or not the appeal site does have a lawful use as a “sui generis vehicle depot” is not before me, but will be decided by the Council in its determination of the LDC application. The important point is that if that use is

⁵ Per the statutory definition of “development” set out at s.55 of the 1990 Act.

⁶ It is not necessary (though can often be helpful) to specify the use *from* which the material change is made.

indeed lawful, then by operation of s.57(4) the fact that an enforcement notice has been issued in respect of the subsequent material change of use means that it could be resumed, without any need to obtain planning permission. It is perhaps worth noting here the contrast with the situation that would exist had the enforcement notice NOT been issued: any existing lawful use as a "sui generis vehicle depot" would have been lost upon the undisputed material change of use of the site to a crane hire depot.

9. For these reasons, the Council's decision on the LDC application does not have any bearing on my determination of this appeal. Any lawful use of the appeal site which subsisted immediately prior to the material change of use here enforced against may resume, whatever that lawful use turns out to have been. Similarly, my decision on this appeal does not have any bearing on the Council's determination of the LDC application. That will turn on the unrelated question of whether the time for taking action against the previous use (as a "sui generis vehicle depot") had expired by the date of the LDC application.
10. I conclude that the requirements of the notice do not exceed what is necessary to remedy the breach of planning control. The appeal on ground (f) fails.

The appeal on ground (g)

11. The ground of appeal is that the six month compliance period specified by the notice falls short of what should reasonably be required. The Appellant seeks an extension of time to 24 months.
12. In cases involving business operations, it is necessary to weigh the interests of the business and its employees against the harm caused by the activities that are the subject of the notice. There is no indication that ceasing the use of this depot would necessitate the closure of the business, but the Appellant's undisputed evidence is that it would nevertheless have significant adverse impacts. Suitable alternative sites would be difficult to locate, and would require appropriate planning permission. The specialist crane operators employed by the Appellant are from the Taunton area, and would not want to drive a 60 mile round trip to Exeter before they start work in the Somerset region. Moving away from the Somerset area would have a huge financial impact on the business, with increased fuel bills and wages, and the need for cranes to travel longer distances to reach projects would adversely affect the environment.
13. On the other hand, the use of the appeal site for crane hire operations involves a substandard access road and junction which, according to the reasons given by the Council for issuing the notice, results in an unacceptable risk to the safety of road users and pedestrians. I note that the Inspector who determined the 2021 appeal also concluded that the development has "an unacceptable adverse impact on highway safety".
14. Taking all of this into account I conclude that the period for compliance should be extended, but to 8 months rather than the 24 sought. The additional two months will provide the Appellant with more time to assess alternative sites, and if necessary explore with the Council the potential for appropriate planning permission at such sites, without blunting the urgency of taking action. I consider that a compliance period of eight months would strike the right balance between the interests of the business, and the public interest in bringing the harm caused by the unauthorised development to an end.

15. To the extent that the human rights of the employees might be interfered with as a consequence of my decision to uphold the notice, that has to be weighed against the wider public interest. On balance, I consider that a period of eight months to comply with the requirements of the notice would not have a disproportionate effect on the business, its employees or its customers.
16. I conclude that the compliance period should be increased from six months to eight, and to that limited extent the appeal on ground (g) succeeds.

Conclusion

17. For the reasons given above, I conclude that the requirements of the notice are not excessive to remedy the breach of planning control, but that the period for compliance with the notice falls a little short of what is reasonable. I shall vary the notice prior to upholding it.

Formal Decision

18. It is directed that the enforcement notice is corrected by:

The deletion of the phrase "The use of the land as" and the substitution of the phrase "The material change in the use of the land to use as" in paragraph 3

and varied by:

The deletion of the word "Six" and the substitution of the word "Eight" in paragraph 6.

Subject to this correction and variation, the enforcement notice is upheld.

Jessica Graham

INSPECTOR