



Appeal Decision

Site visit made on 28 July 2022

by Roy Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 August 2022

Appeal Ref: APP/W0734/C/22/3297730

Land to the north side James Street, North Ormesby, Middlesbrough TS3 6LJ

- 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 Sehar Anwar, Omega Metal Recycling Group, against an enforcement notice issued by Middlesbrough Borough Council.
- The enforcement notice was issued on 6 April 2022.
- The breach of planning control as alleged in the notice is Without planning permission, a change of use of the land has taken place from storage use (B8) to scrap metal yard (sui generis) with associated container units and floodlighting. The Change of use is contrary to paragraph 174 and 185 (a) of the NPPF and saved Policy DC1, Local Plan Policy DC1 (c), and saved policy DC1 (b).
- The requirements of the notice are (i) Cease the unauthorised use of the site; (ii) Remove from the site all materials, container units and floodlighting associated with the use; (iii) Restore the land to its condition before the breach took place.
- The period for compliance with the requirements is 12 weeks.
- The appeal is proceeding on the grounds set out in section 174(2) (b), (c), (d), (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 corrections in the terms set out below in the Formal Decision.

Procedural Matters

1. The Council accepts that the reference to the presence of floodlighting on the site, as part of the alleged breach of planning control, is erroneous. I am satisfied that the notice can be amended by deleting references to floodlighting in the allegation and requirements, without resulting in injustice to the parties.
2. I have also made a minor correction to the the alleged breach of planning control as described in the notice, to refer to a 'material' change of use, to reflect how development is defined in the Act. I am satisfied that this does not prejudice the appellant's case.
3. There is also reference in the part of the notice citing the alleged breach of planning control to reasons for issuing the notice. Accordingly this text may also be omitted.

Background

4. The appellant previously applied for planning permission to change the use of the site to a scrap metal yard. Permission was refused and a subsequent appeal was dismissed on the grounds that it would cause harm to the living

conditions of neighbouring residents by way of noise and would also harm the character and appearance of the area¹.

Reasons

The appeal on grounds (b) and (c)

5. The appeals are respectively that the matters alleged to constitute the breach of planning control have not occurred as a matter of fact (ground b); and that those matters (if they occurred) do not constitute a breach of planning control (ground c). The burden of proof rests with the appellant, with the standard of proof being the balance of probability.
6. Planning permission is required for 'development' as defined in section 55 of the Act. The making of a material change in the use of any building or other land is normally defined as 'development' and therefore requires planning permission. However Section 55(2)(f) of the Act allows the Secretary of State to make an order (the Use Classes Order) which groups different uses of buildings and other land into use classes.
7. Article 3(1) of the Town and Country Planning (Use Classes) Order 1987 (UCO) as amended provides that where a building or other land is used for a purpose of any class specified in the Schedule, the use of that building or that other land for any other purpose of the same class shall not be taken to involve development of the land. This means that a change of use within a single use class does not involve development and therefore does not require planning permission.
8. The notice alleges that there has been a change of use from a storage use within Class B8 of the UCO (use for storage or as a distribution centre) to a scrap metal yard, which the notice refers to as a 'sui generis' use, meaning that it falls outside the definition of any of the use classes specified in the Order.
9. The appellant's case is essentially that whilst there is a scrap metal yard, any materials are simply being brought there for storage purposes only. It says that no discrete processes are undertaken to sort and recycle the metals in that specific location; or to allow access to the public. At appropriate times, when sufficient material has been amassed, stored materials are then removed from the site in order to be sorted and recycled at an alternative location. Accordingly the site continues to be operated for storage purposes only. The appellant therefore claims that no material change of use has taken place requiring planning permission, such that a Class B8 use continues on the site.
10. Many uses are 'sui generis'. Article 3(6) of the UCO specifies some of these uses which do not fall within a specific Use Class, with scrapyards being expressly referred to as such. To my mind it is relevant that Article 3(6) refers to use as a 'scrapyard' and does not seek to qualify its inclusion there on the basis of processes taking place on the site over and above that of storage.
11. It was evident from my visit that various items of scrap metal were being stored on the site, some containerised and some kept loosely in open storage bays. I observed piles of loose materials, some of which were relatively tall, and included wire and sheet metals; also a delivery of metal parts which resulted in a loud clanking sound as they were deposited.

¹ Appeal Ref APP/W0734/W/21/3283975

12. Even if the site is being used only for the storage of scrap metal, I concur with the view that the delivery and collection of such materials would frequently result in loud and intermittent bangs and crashes resulting from the picking up, dropping from height, cascading and grinding together of loose material. Furthermore the storage of loose, amorphous pieces of scrap material, albeit arguably necessarily, in seemingly jumbled and disorderly piles gives rise to the use having an unsightly quality.
13. Although an external storage and distribution land use environment could not reasonably be expected to be noise free and would not necessarily represent high quality visual design, it therefore seems to me that scrap metal storage, by its inherent nature, would have distinctive noise and visual characteristics, distinguishing it from other types of external storage that might typically fall within the B8 use class. Scrap metal storage would therefore, on the balance of probability, result in materially different impacts on the surrounding environment when compared with other types of external storage. This does not mean that such impacts could not be mitigated, depending on specific circumstances, but this is not a matter relevant to an appeal on ground (b) or (c) where the merits of the development are not being considered. Notwithstanding this, that such activity should fall outside a specific Use Class within the UCO would therefore be logical.
14. Drawing the above considerations together I conclude that the scrap metal yard, even if used for storage purposes only, would still constitute a 'sui generis' use rather than a land use that falls within Use Class B8 of the UCO. Accordingly I find that there is a scrap metal yard (sui generis) in operation, and that a material change of use requiring planning permission has occurred. The appeal on grounds (b) and (c) therefore fail.

The appeal on ground (d)

15. The ground of appeal is that at the date when the notice was issued, no enforcement action could be taken in relation to the alleged change of use. In order to succeed on this ground it would be necessary for the appellant to show, on the balance of probability, that the use of the site as a scrap metal yard had commenced at least 10 years before the notice was issued, that is by 6 April 2012, and had continued in such use over a ten-year period. It must be shown that there has not been any significant interruption in the use, in order to demonstrate the necessary continuity.
16. The appellant's case in this regard is that Use Class B8 has been the long-standing lawful use of the site, notwithstanding the officer report confirming the site to have been vacant for a long period. However irrespective of whether and for how long the B8 use class has previously endured on the site, I have determined that that use has now been supplanted by the current 'sui generis' scrap metal yard use. There is no suggestion that the scrap metal yard use has continued for at least a 10-year period. Accordingly it cannot be successfully claimed that this use is immune from enforcement action. The ground (d) appeal therefore fails.

The appeal on ground (f)

17. The ground of appeal is that the steps required by the notice to be taken exceed what is necessary to achieve the purpose. The purposes of an enforcement notice are set out in s173 of the Act and include remedying the breach of planning control by discontinuing the use of the land or by restoring the land to its condition before the breach took place (s173 (4) (a)).
18. The appellant's case is that the requirement to cease the use is excessive because the use accords with the lawful use of the site. I have concluded above that this is not the case. I have also set out that the notice should be corrected to address the excessive requirement relating to the erroneous allegation of floodlighting.
19. Given that the purpose of the notice is to remedy the breach of planning control, to require this by ceasing the unauthorised use of the site and the subsequent restoration of the land to its condition before the breach took place would be in accordance with the Act. To require that does not, therefore, exceed what is necessary and the appeal on this ground must fail.

The appeal on ground (g)

20. The appeal is that the compliance period falls short of what should reasonably be allowed. I need to balance the public interest in the notice being complied with expeditiously against the private interests bound up in the development.
21. I am mindful that the appellant is currently trying to secure planning permission to operate from an alternative site and is concerned that having to end or interrupt business operations would lead to financial hardship, the impacts of which would be exacerbated by the effect of the recent pandemic. On the other hand I share the Council's concerns with regard to the enduring and significant impact of the scrap yard on the living conditions of nearby residents and on the character and appearance of the area. On balance I therefore consider that a 12-week compliance period would be proportionate in this case. Accordingly the ground (g) appeal fails.

Conclusion

22. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections.

Formal Decision

23. It is directed that the enforcement notice be corrected by:

The deletion of the wording describing the alleged breach of planning control, at Schedule 3, in its entirety, and substitution with the following wording instead:

"Without planning permission, a material change of use of the land has taken place from storage use (B8) to scrap metal yard (sui generis) with associated container units."; and

The deletion of the wording at Schedule 5(ii), in its entirety, and substitution with the following wording instead:

“Remove from the site all materials and container units associated with the use.”

24. Subject to the corrections the appeal is dismissed and the enforcement notice is upheld.

Roy Merrett

INSPECTOR