



Appeal Decision

Site visit made on 7 March 2023

by A A Phillips BA(Hons) DipTP MTP MRTPI AssocIHBC

an Inspector appointed by the Secretary of State

Decision date: 16 March 2023

Appeal Ref: APP/P4605/C/22/3299866

Land to the Rear of 4 Felstone Road, Birmingham B44 9AB

- 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 Neal Darke against an enforcement notice issued by Birmingham City Council.
- The enforcement notice was issued on 3 May 2022.
- The breach of planning control as alleged in the notice is the change of use of the Land to the storage of shipping containers and the operation of a self-storage business in the approximate position marked in green on the attached plan.
- The requirements of the notice are:
 - i. Cease the unauthorised use of the and as a self-storage business.
 - ii. Remove all of the shipping containers from the Land.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(d and (f) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld.

Appeal Site

1. The appeal site is situated to the rear of residential properties on Felstone Road and Dewhurst Road and adjacent to an education site. It is accessed by a shared driveway. At my site visit I observed that there are approximately twelve existing lock-up garages and approximately 21 shipping containers. A vehicle repair garage also operates from the site and there also appears to be a small office.

The appeal on ground (d)

2. The ground of appeal is that at the date when the Notice was issued, no enforcement action could be taken. Under ground (d) the burden of proof is on the appellant and the test is the balance of probabilities. In order to succeed on ground (d) it would need to be shown that the use of the Land for the storage of shipping containers and the operation of a self-storage business had been continuous for a period of 10 years prior to the Enforcement Notice being issued.
3. The evidence submitted comprises letters from tenants, photographs of the containers and a planning decision relating to the refusal of planning permission for the demolition of the garages and erection of one detached dwellinghouse and garage (Reference 91/04911/OUT). The letters from those claiming to be tenants of the appeal site lack details in terms of the specific site or unit they leased, evidence of rent and amounts paid and the terms and

conditions of tenancy. In addition, there are only three letters, one of which relates to renting two different lock ups.

4. The photographs show little other than alleging how the containers do not affect the amenity of local residents, but that is of little benefit in terms of determining the appeal on ground (d). I can see that planning permission for a detached dwellinghouse and garage was refused in January 1992 for several reasons, including proximity to commercial activities. That is the only relevant reason and in any case that is insufficiently precise to demonstrate exactly how the appeal site has been used in the past.
5. Furthermore, the alleged breach of planning control relates to a material change of use to the storage of shipping containers and the operation of a business, which is different in terms of the nature of the use in comparison to the previous use of the Land. The evidence is unclear as to whether the appeal site has been used continuously for commercial storage purposes and in any case any lawful use may have become unlawful from 2013 when the shipping containers were imported onto the Land for self-storage purposes. The intensification of the use is key in this case and although the site may have been used for garages in the past, the storage of the larger shipping containers will have intensified any use that may have taken place prior to 2013.
6. Therefore, as a consequence of the lack of detailed evidence relating to ten years of continuous use of the site for the development alleged in the Notice, the appeal on ground (d) cannot succeed.

The appeal on ground (f)

7. The ground of appeal is that the steps required by the notice to be taken exceed what is necessary to achieve its purpose. The purposes of an enforcement notice are set out in s173 of the Act and are to remedy the breach of planning control (s173(4)(a)) or to remedy injury to amenity (s173(4)(b)). Since the notice requires the use of the Land as a self-storage business to cease and the shipping containers to be removed, the purpose is to remedy the breach. Allowing the use to continue or leaving any storage containers on the Land would not achieve that purpose. In this respect the appeals on ground (f) fail.
8. In any case the appellant has not suggested any lesser steps that would overcome the objections to the development. Furthermore, since there is no appeal on ground (a) and the purpose of the notice is to remedy the breach of planning control, any lesser steps that would not remedy the breach cannot be accepted through ground (f).

Conclusion

9. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

Formal decision

10. The appeal is dismissed and the enforcement notice is upheld.

A A Phillips

INSPECTOR