



Appeal Decision

Site visit made on 18 October 2023

by D Hartley BA(Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date 20 October 2023

Appeal Ref: APP/W0530/C/21/3284513

The land at 22 Cambridge Road, Foxton, Cambridgeshire CB22 6SH

- 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 Andrew Miller of Andrews Coaches against an enforcement notice issued by South Cambridgeshire District Council.
- The enforcement notice was issued on 10 September 2021.
- The breach of planning control as alleged in the notice is without planning permission 1) the material change of use of the land hatched in blue on the attached plan to a coach depot including the parking and storage of coaches and 2) the creation of an area of hardstanding for use as a coach depot on the land hatched blue on the attached plan.
- The requirements of the notice are 1) cease the use of the land hatched in blue on the attached plan as a coach depot and coach storage in the., 2) remove all coaches and all items associated with the coach depot and coach storage permanently from the area hatched in blue on the attached plan, and 3). remove all hardstanding from the land hatched blue on the attached plan and reseed with grass.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (b), (c), (d), (f) 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.

Decision

1. The enforcement notice is quashed.

Reasons

Ground (b) and (c) appeals

2. The appeal on ground (b) is made on the basis that the matters comprising the alleged breach of planning control have not occurred. The appeal made on ground (c) is that the matters alleged do not constitute a breach of planning control. I shall deal with both grounds of appeal together as there is some overlap.
3. The plan attached to the notice includes land hatched black and land hatched blue falling within an outer red edged line which relates to the land affected by the notice. The land hatched black is labelled as '*land approved for coach depot use under reference S/0343/04*'. Indeed, a certificate of lawful development (LDC) under section 191 of the Act was issued on 20 July 2004 for a commercial coach depot for 6 coaches with access from the public highway via the adjoining filling station forecourt. However, the land hatched black on the plan attached to the notice has not been drawn correctly such that a triangular

section of land certified as a lawful coach depot use is included within the blue hatched land on the plan attached to the notice. This land relates to an alleged material change of use of the land to a coach depot including the parking and storage of coaches and the creation of a hardstanding for use as a coach depot.

4. In respect of the above, appellant is right on the substance of the ground (b) appeal. Part of the blue hatched land includes a lawful coach depot use and in respect of the attached plan and, to this extent, the matters alleged in the breach of planning control have not occurred. Therefore, and, in this regard, the ground (b) appeal succeeds. However, it would cause no injustice to correct the notice so that the blue hatched area excluded 'the triangular' section of land. On this basis, while the ground (b) appeal does succeed, it does not follow that in this regard the notice should be quashed.
5. The question as to whether there has been a material change of use as alleged could fall under grounds (b) or (c). The notice does not say what there has been a material change of use from, but the logic of the notice and Council's case is that there has been a material change of use from residential garden to coach depot use. The Council considers that the lawful coach depot was a separate planning unit to the dwellinghouse as affirmed by the LDC.
6. However, in my judgement the LDC does not establish what the Council thinks it does. The LDC clearly relates to the whole of the land at 22 Cambridge Road, as edged with a red line. The LDC says that the land is lawfully used for residential purposes and as a coach depot. The LDC plan shows the two uses taking place within different parts of the whole site, but it does not follow that the two parts of the site are different planning units.
7. The evidence is that the whole site edged in a red line was, at the time of the LDC, a single unit of occupation. There is no indication that there was a physical division between the coach depot as per the photographs attached in appendix 6 of the appellant's statement of case. The two uses share a single access, and they are functionally connected in that both are carried out by the same appellant. On that basis, I find that the LDC certified the mixed use (coach depot and dwellinghouse) of a single planning unit. It does not matter that the LDC did not refer to a mixed use or that it showed coach parking within a limited part of the site. In reaching this conclusion, I have also considered the detailed wording of the LDC. Of relevance, is the main text of the LDC which refers to 'use' and not 'uses.'
8. I therefore find that there has not been a material change of use as alleged by the notice. There has only been an expansion of one component of a lawful use within the planning unit. It is theoretically possible that there has been a material change of use through intensification of the coach depot component, but I cannot consider whether that has occurred because there is not sufficient evidence before me. In this case, I cannot therefore correct the breach of planning control without causing injustice. Furthermore, a possible correction of the breach of planning control would cause injustice in so far that the case made by the appellant in respect of some of the grounds of appeal would likely have been very different.
9. The notice also relates to a hardstanding. This appears to be enforced against in its own right. The notice states that the same '*land hatched blue*' as the alleged material change of use includes unauthorised hardstanding. Given my findings relating to the alleged material change of use, I do not find that there

is sufficient clarity in the notice in terms of the purpose for which the said hardstanding would be used. It is not, for example, clear whether the hardstanding has been used to facilitate a material change of use through intensification of the mixed use on the site.

10. The appellant makes the claim that the hardstanding is permitted development given Class J of Part 7 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015. However, these rights relate to the provision of a hard surface within the curtilage of an industrial building or warehouse and the hardstanding is not within the curtilage of an industrial building or warehouse. It is not therefore permitted development.
11. I have already concluded that I cannot correct the material change of use allegation without injustice being caused. A consideration of the hardstanding area in isolation is not possible as I cannot be certain about the specifics of the use of such hardstanding given my conclusion relating to the alleged material change of use. In other words, the consideration of the hardstanding area needs to be considered alongside the use of such land and the breach of planning control is not accurate and so does not provide the certainty needed in this regard. Furthermore, it is not clear whether the hardstanding area has or has not facilitated a material change of the land through intensification. This is a matter that would need to be separately investigated by the Council.
12. In conclusion, the notice does not describe a breach of planning control that has occurred. There has either been no material change of use and no breach, or there has been a different breach which the notice could not be corrected to describe. The outcome is the same either way. Furthermore, and for the reasons outlined, I cannot proceed to consider the alleged hardstanding with sufficient clarity and certainty in terms of its use. Therefore, and, for these reasons, the appeals under grounds (b) and (c) succeed.

Conclusion

13. For the reasons given above, I conclude that the enforcement notice does not specify with sufficient clarity the alleged breach of planning control. It is not open to me to correct the error in accordance with my powers under section 176(1)(a) of the 1990 Act as amended since injustice would be caused were I to do so. The enforcement notice is invalid and will be quashed. In these circumstances the appeal under grounds (d), (f) and (g) as set out in section 174(2) of the 1990 Act as amended and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended do not fall to be considered.

D Hartley

INSPECTOR