The Planning Inspectorate

Appeal Decision

by Stephen Hawkins MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 December 2023

Appeal Ref: APP/A1910/C/23/3322546
25 Crossways, Hemel Hempstead HP3 8PU

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Imran Iqbal against an enforcement notice issued by Dacorum Borough Council.
- The notice was issued on 27 April 2023.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the land for the parking and storing of commercial vehicles.
- The requirements of the notice are: 1-Cease the parking of commercial vans, trucks or lorries within the area marked A on the plan attached to the notice. 2-Park no more than two commercial vans, trucks or lorries within area B of *(sic)* the attached plan.
- The period for compliance with the requirements is one month.
- The appeal is proceeding on the grounds set out in section 174(2)(b) & (c) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act have lapsed.

Decision

1. It is directed that the enforcement notice be corrected by at paragraph 3 ("The matters which appear to constitute the breach of planning control") substituting "…the material change of use of the land for the parking and storing of commercial vehicles" with "…the material change of use of the land to a mixed use as a dwellinghouse and use for the parking and storage of commercial vehicles." Subject to this correction the appeal is allowed and the enforcement notice is quashed.

Preliminary Matter

2. I consider that the appeal can be determined without the need for a site visit. This is because I have been able to reach a decision based on the information already available.

Ground (b) and (c) appeals

3. The ground (b) appeal is that the matters alleged in the notice have not occurred. Although the appeal was initially made under this heading only, points more appropriate to ground (c)- "that those matters (if they occurred) do not constitute a breach of planning control" were raised in the appellant's written submissions. Consequently, I intend to consider the appeal as if it had also been made on ground (c). There would be no unfairness in doing so, as the Council's written submissions included a ground (c) response. On both grounds the onus is on the appellant to show why their appeal should succeed, the relevant test of the available evidence being on the balance of probability.

4. The appeal property contains a substantial detached dwelling with an extensive area of hard surface at the front and side. The appellant accepted that a number of light commercial vehicles, mostly associated with the appellant's landscaping business, including two tipper vans and two transit-type vans, have been parked and stored on the hard surface. Therefore, the activity alleged in the notice has in fact occurred.

5. There is no reference in the allegation however to the primary use of the property as a dwellinghouse. It was not suggested that such use had ceased or that the vehicle parking and storage use alleged is in a separate planning unit. There is a mixed use where two or more primary uses are within the same planning unit and the uses are not ancillary to one another. If, as I believe to be the case, what is actually being alleged by the Council is a mixed use of the property, the allegation is required to specify all components of that use, even if it is considered expedient that only one component should cease. Relevant case law confirms that where there is a mixed use, it is not open to the Council to decouple elements of it. The use will be a single mixed use with all its component activities[1]. Accordingly, the allegation is inaccurate.

6. At s176 (1)(a), the Act provides for correcting a defect, error or misdescription in an enforcement notice, the only test being whether injustice would be caused to the appellant or the Council. After seeking comments from the main parties, I shall correct the notice to include the dwellinghouse use in the allegation. There would be no injustice, as the notice would not be made more onerous by doing so. The consequence of this partial success on ground (b) is that the ground (c) appeal falls to be considered in relation to the corrected allegation.

7. According to the appellant, the vehicles parked and stored at the property are used solely by the occupiers of the dwelling for travelling to and from their place of work, or as in the case of one of the vehicles, for private recreational purposes. The appellant also stated that no loading or unloading of materials or equipment takes place at the property and that none of the vehicles are used other than by the occupiers of the dwelling. I am given to understand that the appellant's business is based at premises elsewhere in the town.

8. The parking and storage in the curtilage of a dwelling of vehicles used by its occupiers is an activity that would ordinarily be regarded as being ancillary or incidental to the primary dwellinghouse use. Travelling to and from a dwelling for purposes of work and for private recreation fall within the range of day-to-day activities typically undertaken by residential occupiers. Although most of the vehicles are also used off-site for commercial purposes, there is no firm evidence to suggest that they are being parked and stored at the property other than in the circumstances set out by the appellant. Therefore, in my view there is a functional relationship between the vehicle parking and storage activity and the primary dwellinghouse use, not dissimilar to that normally found at a dwelling. The Council accepted that up to two commercial vehicles could be parked or stored at the property without amounting to a material change of use.

9. An ancillary use is not necessarily distinguished by its scale. Accordingly, neither the number and size of the vehicles parked and stored at the property nor their commercial nature would necessarily be conclusive as to whether

[1] *R (oao) East Sussex CC v SSCLG & Robins & Robins* [2009] EWHC 3841.

there has been a material change in character from the lawful use as a dwellinghouse. In practice, there is little difference between the size and appearance of vehicles at the property and the larger private domestic vehicle types typically used by many householders and kept within the grounds of dwellings, including for example, SUVs and pick-ups. Furthermore, where a single dwelling is occupied by a number of adult members of the same family, as in this instance, it is not unusual for there to be several vehicles parked or stored within the grounds to meet the occupiers' day-to-day travel requirements. Set in the above context, the vehicle parking and storage activity has a limited visual impact on its predominantly residential setting.

10. There is no firm evidence to indicate that the parking and storage activity has involved an increase in vehicular movements to and from the property over and above that normally associated with a single dwelling, or of any additional noise and disturbance being experienced by neighbouring residential occupiers and/or in the vicinity as a result. Furthermore, there is no firm evidence to suggest that the types of vehicles parked and stored at the property are significantly noisier, either when starting up or when running, compared to private domestic vehicle types typically used by householders. For this and the other reasons set out above, it seems to me that the activity at the property is little different in terms of its character to that which would ordinarily be associated with the lawful use as a single dwellinghouse.

11. Consequently, I find that on the basis of the available evidence, as a matter of fact and degree and on the balance of probability, the commercial vehicle parking and storage activity is ancillary to the primary use of the property as a dwellinghouse and does not involve a material change of use. As the appellant has been able to show that the matters alleged in the notice do not constitute a breach of planning control, the ground (c) appeal succeeds.

Conclusion

12. For the reasons given above I conclude that the appeal should succeed on ground (c). Accordingly, the enforcement notice will be quashed.

Stephen Hawkins

INSPECTOR