



Appeal Decision

Site visit made on 30 January 2024

by J Whitfield BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Levelling Up, Housing and Communities

Decision date: 15th February 2024

Appeal Ref: APP/Y2620/C/22/3301141

Land known as Harleys (the former Ark Royal Site), Freeman Street, Wells-next-the-Sea

- 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 Adrian Arkell-Springett, Pointens against an enforcement notice issued by North Norfolk District Council (the LPA).
 - The enforcement notice was issued on 19 May 2022.
 - The breach of planning control as alleged in the notice is material change of use of the Land for the siting of a mobile pizza van for hot takeaway food for longer than the period permitted by the Town and Country (General Permitted Development) (England) Order 2015.
 - The requirements of the notice are:
 1. Remove the mobile pizza van from the Land.
 2. Cease the use of the Land for the provision of hot Takeaway food that exceeds 28 days in total in any calendar year.
 - The period for compliance with the requirements is 2 weeks.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b) and (c) 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.
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Formal Decision

1. The enforcement notice is quashed.

The Notice

2. The Land was previously occupied by a public house and restaurant, which has subsequently been demolished. The notice is directly solely against the material change of use of the Land to the siting of a mobile pizza van for hot takeaway food. However, the parties indicate that since the demolition, the Land has been used for car parking and continues to be so.
3. I saw from my site visit that the Land is laid to hardstanding with several parking bays marked out with white lines. There were also railings separating the Land from the footpath, an opening from the highway for vehicular access with a height restriction barrier and signage indicating the presence of a car park. Moreover, there are signs on the Land providing terms and conditions, details for electronic payments as well as payment machines and CCTV cameras. One vehicle was parked in a marked bay on the Land at the time of my site visit.

4. The appellant indicates that the use of the Land for car parking commenced in June 2001. The LPA does not dispute this. This therefore pre-dates the issue of the enforcement notice. Given both my observations and the submissions of the parties that car parking is an ongoing use, it is reasonable to conclude the Land was in use for car parking at the date the notice was issued.
5. The use of land for car parking essentially comprises the situation where a car or other vehicle is left in a convenient place for the resumption of an interrupted journey or for the start of the next journey.
6. In contrast, the mobile pizza van here has been sited on the Land for more prolonged periods, notwithstanding the dispute between the parties over the number of days. Moreover, the LPA indicate the van cannot be legally driven on the public highway. It seems to me that the siting of the van is not therefore as a temporary cessation of its everyday use as a vehicle for travel, but solely for the purpose of serving hot food to customers. As a result, there is a material difference between the use of the Land for car parking and the use of the Land for the siting of a mobile catering van for the sale of hot food.
7. Nonetheless, it is apparent that, at the date the notice was issued, the two uses were taking place concurrently on the Land. There is no evidence that there has been any physical separation of the van from the car parking. Moreover, whilst customers may have parked in the car park and visited the van, the purpose of the car park has not primarily been to serve the mobile van. Likewise, the van has not been sited solely to serve customers who use the car park. As a consequence, it seems that, at the date the notice was issued, the Land was a single planning unit in use for two separate primary uses, neither being incidental to the other, that being the use as a car park and the use for the siting of a mobile catering van.
8. The concept of a mixed use is one of two or more primary uses existing within the same planning unit. One is not incidental to the other. That appears to have been the case here at the date the notice was issued.
9. In mixed use cases, the allegation should refer to all the components of the mixed use, even if only one is required to cease. It was held in *R (oao) East Sussex CC v SSCLG* [2009] EWHC 3841 (Admin) that, where there is a mixed use, it is not open to the LPA to decouple elements of it; the use is a single mixed use with all its component activities.
10. It is open to me to correct the notice so it refers to the material change of use of the Land to a mixed use of the siting of a mobile pizza van for hot takeaway food and a car park. However, it is only open to me to do so where I am satisfied it would not lead to injustice to the appellant or the LPA.
11. If I were to correct the allegation, then I would have to consider the effect that would have on the requirements of the notice. The notice currently does not require the use of the Land for car parking to cease.
12. If I were to correct the allegation and include a requirement to cease the use of the Land for car parking, that would result in injustice to the appellant, since it would widen the scope of the notice and make it more onerous to comply with than if they had not appealed.
13. Likewise, were I to correct the notice to allege the mixed use, but not include a requirement to cease the use of the Land for car parking, that would result in

injustice to the LPA, since the effect of S173(11) of the Act is that an unconditional planning permission would be granted for car parking on the Land.

14. I conclude that the notice does not specify with sufficient clarity the alleged breach of planning control. It does not therefore comply with the requirements of S173(2) of the Act. It is not open to me to correct the error in accordance with my powers under S176(1)(a) of the Act, since injustice would be caused were I to do so. The enforcement notice is thus invalid and will be quashed.
15. In these circumstances, the appeals on the grounds set out in S174(2)(a), (b) and (c) of the Act, and the application for planning permission deemed to have been made under S177(5) of the Act do not fall to be considered.

J Whitfield

INSPECTOR