



Appeal Decision

Site visit made on 20 February 2024

by H Davies MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 February 2024

Appeal Ref: APP/Y3940/C/23/3318772

Land to the rear of 53 London Road, Amesbury, Wiltshire SP4 7EE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended (the Act).
- The appeal is made by Mr Edi Avdullari of Dorset&Carpentry Ltd against an enforcement notice issued by Wiltshire Council.
- The notice was issued on 13 March 2023.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the Land for storage purposes.
- The requirements of the notice are to:
 - a) Permanently cease use of the Land for storage purposes
 - b) Permanently remove all the items stored from the Land. This includes, but is not limited to all motor vehicles, caravans, bicycle parts, scaffold boards and poles, assorted timber items, metal profile sheeting, plastic drainage pipes.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the ground set out in section 174(2)(a) of the Act. 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.

Summary of decision: The appeal is dismissed, the enforcement notice is upheld, with a correction, and planning permission is refused.

The notice and preliminary matters

1. I have a duty to get the notice in order and s176(1) of the Act grants powers to (a) correct any defect, error or misdescription in the enforcement notice, and/or (b) vary the terms of the notice, provided it would not result in injustice to the appellant or the Council. The wording of the notice is clear, but a minor correction would improve precision and readability, without changing the allegation, as set out in the formal decision.
2. The National Planning Policy Framework (the Framework) was updated in late 2023. The notice refers to chapter 12 of the 2021 Framework, with the Council statement specifically pointing to paragraph 130. The changes to chapter 12 in the 2023 version are modest, and paragraph 130 has not changed, other than to be renumbered as 135. Hence, the changes do not impact on how the Framework applies to this appeal.
3. I am informed that the Land subject to this appeal was previously part of the garden of 53 London Road but has at some point been divided off and is now in different ownership to the dwelling. There is solid fencing between No 53 and the Land, with no functional relationship between the two. As a result, the Land is no longer within the curtilage of a dwelling and forms its own separate planning unit. Therefore, any storage use cannot be considered as being ancillary to a residential dwelling.

4. As noted below, some items had been removed from the Land between the notice being issued and my site visit. I have not deleted these items from the list in requirement b) of the notice, to ensure that any such items are not returned to the Land.

The appeal on ground (a) and the deemed planning application

5. The ground of appeal is that in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted. The terms of the deemed planning application are derived from the allegation, as corrected. Hence, planning permission is sought for the material change of use of the Land to use for storage purposes.

Main issues

6. The main issues are the effect of the development on:
 - The character and appearance of the area; and
 - The living conditions of occupants of neighbouring dwellings, in terms of outlook, noise and disturbance.

Reasons – Character and appearance

7. The Land is located to the rear of 53 London Road which is a detached single storey dwelling, with a similar dwelling to one side and a modest two storey block of flats to the other side. The area around the site is residential in character, with a mix of one and two storey dwellings, most of which are detached and feature generous gardens. The Land is accessed via a narrow driveway running directly between No 53 and the flats. Beyond the driveway, the Land is bounded on all sides by neighbouring gardens, including what remains of the rear garden at No 53.
8. Photographs provided by the Council, following site visits undertaken prior to issuing the notice, show the Land being used for the storage of multiple vehicles, caravans, bicycles, bicycle wheels and tyres, as well as wood and assorted other items. At the time of my site visit, I noted that the vehicles and bicycles had been removed. However, the Land was still being used for storage, including 2 caravans, multiple bicycle wheels and tyres, wood piles covered with plastic sheeting, window/door frames and 3 fridge/freezer units. One of the caravans had an assortment of items stored within it (including cushions, a bicycle frame and plastic sheeting).
9. Notwithstanding the removal of some items from the site, the use of the Land for storage is significantly different in character to its previous use as residential garden and hence a material change of use has taken place. I must consider the planning merits of using the Land for storage purposes, in this location.
10. Sections of the Land are visible from the street, along the access driveway, as well as from neighbouring dwellings. Due to the nature and number of items being stored, the Land has a character and appearance more akin to an edge of town industrial area. This is entirely out of keeping with the local residential context. As such, the use is not appropriate in this location and it relates poorly to its setting.

11. I conclude that the material change of use of the Land, to use for storage, causes unacceptable harm to the character and appearance of the area. Consequently, the development does not comply with Core Policy 57 (Ensuring high quality design and place shaping) of the Wiltshire Local Development Framework Core Strategy (2015) (CS). Amongst other things, this policy seeks to ensure that development takes account of the characteristics of the site and the local context to deliver an appropriate development which relates effectively to the immediate setting and to the wider character of the area. Furthermore, it does not accord with paragraph 135 of the Framework (2023) which supports developments that are sympathetic to local character.

Reasons – Living conditions

12. The Land is highly visible from windows and outside amenity space at several adjoining and nearby dwellings. The appearance of the Land, which has resulted from its use for storage purposes means that the outlook from surrounding dwellings is poor, and materially different to the outlook that would have been the case when the Land was in residential use. In addition, the noise and disturbance created by use of the Land for storage, is likely to be significantly different and more intrusive for neighbours than would be the case from a typical residential garden use.
13. I conclude that the material change of use of the Land, to use for storage, causes unacceptable harm to the living conditions of occupants of neighbouring dwellings, in terms of outlook, noise and disturbance. Consequently, the development does not comply with Core Policy 57 of the CS. Amongst other things, this policy seeks to ensure that development has regard to the compatibility of adjoining uses and the impact on the amenities of existing occupants.

Conclusion on ground (a) and the deemed planning application

14. I conclude that the development conflicts with the development plan as a whole and there are no material considerations which indicate that the decision should be taken other than in accordance with the development plan. The appeal on ground (a) fails. I shall uphold the enforcement notice, with correction, and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Other matters

15. The appellant has questioned the motivation of the Council in issuing the notice. They have also mentioned the purchase price of the adjoining property, interactions with a third party, and other applications. These matters do not relate to the planning merits of using the Land for storage purposes and do not change my findings regarding the deemed planning application, as set out above.

Formal decision

16. It is directed that the enforcement notice is corrected as follows:
- In section 3, 'the matters which appear to constitute the breach of planning control', between the words 'Land' and 'for', insert the words 'to use', so that the allegation reads 'the material change of use of the Land to use for storage purposes'.

17. Subject to this correction the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

H Davies

INSPECTOR