



Appeal Decisions

Site visit made on 5 March 2024

by **P N Jarratt BA (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 12 March 2024

Appeal A Ref: APP/P0119/C/23/3325071

Appeal B Ref: APP/P0119/C/23/3325072

Verdun House Wotton Road, Iron Acton, BRISTOL, BS37 9XD

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended. **Appeal A** is made by Southwest Horseboxes Ltd and **Appeal B** is made by Mr Paul Nicoll (Southwest Horseboxes Ltd) against an enforcement notice issued by South Gloucestershire Council.
 - The notice, numbered COM/22/0793/COU1, was issued on 1 June 2023.
 - The breach of planning control as alleged in the notice is change of use of land from residential use to a mixed use of residential use and the storage of repair and sale of motor vehicles without planning permission. The construction of a large area of hardstanding to facilitate the change of use.
 - The requirements of the notice are to:
 - 1 Permanently cease the use of the land for the storage, repair and sale of motor vehicles;
 - 2 Remove all associated vehicles from the land;
 - 3 Permanently remove all hardstanding associated with the storage and sale of motor vehicles from the land (marked in blue on the plan attached to the notice);
 - 4 Restore the land to its condition before the breach took place.
 - The periods for compliance with the requirements is three months.
 - Appeal A is proceeding on the grounds set out in section 174(2)(a), (b), (c), (f), (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.
 - Appeal B is proceeding on grounds (b), (c), (f), (g) of the Town and Country Planning Act 1990 as amended.
-

Decisions

Appeal A Ref: APP/P0119/C/23/3325071

1. 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.

Appeal B Ref: APP/P0119/C/23/3325072

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

Preliminary Matters

3. The appellant failed to make arrangements for me to access the site at the specified time but I was able to view the hardstanding referred to in the notice and a couple of horseboxes beyond the gates. Together with the evidence submitted by the parties, I am able to determine the appeal without further

access to the site. A previous access required site visit had to be cancelled as it was inconvenient to the appellant.

4. With appeals on legal grounds the burden of proof rests with the appellant and the level of proof is on the balance of probability.

The Notice

5. The appellant claims the notice is defective and is a nullity due to requirement 3 being unclear and ambiguous by not including the entirety of the hardstanding that has been laid. Any correction of the boundary would lead to an injustice to the appellant.
6. The Council is seeking the removal of the new hardstanding to the front of the property and running to the south and constructed for the storage of commercial vehicles being offered for sale and repaired on the site. This area is clearly shown outlined in blue on the plan attached to the notice. Appendix 6 of the Council's statement shows this area prior to the change of use. The notice is neither unclear nor ambiguous.

The site and relevant planning history

7. Verdun House is a detached residential property fronting Wotton Road within the Bristol and Bath Green Belt.
8. Although there is no relevant planning history in respect of the site other than the enforcement investigations that have led to this appeal, the Council draws attention to the appellant's similar business activities on another site which was also the subject of an enforcement notice. However, that is not relevant to this appeal.
9. Following a complaint that a business was operating from the appeal site, a site visit in December 2022 revealed 7 horseboxes/vans being stored and worked on at the property in connection with the business Southwest Horseboxes. In February 2023, some 9 large horsebox vehicles were being stored and worked on. Subsequent drive-by observations indicated large numbers of vehicles on site. The company's website indicates that a selection of new and used horseboxes are available for viewing by appointment at their headquarters at Verdun House.

The appeal on ground (b)

10. An appeal on this ground is that the alleged breach has not occurred as a matter of fact. The appellant states that vehicles are not stored on the site but are only parked for a short period of around two weeks. No motor vehicles are repaired on the site but are repaired and prepared for use as horse boxes at the MJH Coach Works in the West Midlands. No vehicles are sold on site and is not open to passing trade. An interested party may visit the site to view or collect a horse box, about one a week and by appointment. The hardstanding is not for the purpose of storage, repair and sale of motor vehicles but for short term parking of vehicles prior to delivery to their owners. It is pointed out that a hardstanding could be provided for purposes incidental to the use of a dwelling house as permitted development.
11. It is clear from the available evidence, including the submitted photographs and that of local residents, that the site is being used for the purposes of a business

and vehicles are stored on the site prior to sale and collection by a client. The appellant's contention that the vehicles are parked and not stored is without substance, and I note that at paragraph 4.16 of the appellant's statement, it is accepted that 'the horse boxes are stored on the land for a short period of time (around 2 weeks)'. The frequency of these collections, whether or not they are by appointment, indicates that the alleged mixed use has occurred. Although the appellant claims that no repairs take place on site but takes place in the West Midlands, this appears to be contradicted by the evidence.

12. The appellant accepts that the hardstanding has been provided for the short term parking of vehicles prior to delivery to their owners. Whether this would represent permitted development if provided for purposes ancillary to the enjoyment of the dwellinghouse is irrelevant in this case as the hardstanding has been provided for business purposes.
13. The appellant has not shown on the balance of probability that a breach has not occurred. As a matter of fact, I find that a breach has occurred and the appeal on this ground therefore fails.

The appeal on ground (c)

14. An appeal on this ground is that the alleged breach does not constitute a breach of planning control. The appellant states the business use of a residential property is not a breach of control if it remains incidental to the dwelling and refers to an appeal¹ in which having a number of vehicles parked on site does not amount to a material change of use. Reference is also made to other neighbouring dwellings that have large areas of hardstanding.
15. Establishing whether a material change of use to a mixed use has occurred and represents development for which planning permission is required is a matter of fact and degree. The evidence shows that on average some 9 horseboxes have been observed by the Council on their various site visits and that according to the residents, that on most days vehicles are parked on the pavement or verge outside Verdun House. This all indicates that there has been a change in the character of the residential use represented by the level of activity associated with the business use which is of a degree that would exceed what would be accepted as normally being ancillary to a residential use. This constitutes a material change of use which is development for which planning permission is necessary.
16. The appellant has not shown on the balance of probability that the development that has occurred does not constitute a breach of planning control.
17. The appeal on this ground fails.

The appeal on ground (a)

18. An appeal on this ground is that planning permission should be granted. The site is in the Green Belt and accordingly the main issues are whether the development represents inappropriate development in the Green Belt; whether it impacts upon its openness; and, if it is inappropriate development, whether the harm to by reason of inappropriateness, and any other harm, is clearly outweighed by other circumstances, so as to amount to the very special circumstances necessary to justify it.

¹ APP/D4635/C/11/2150709

19. Although the National Planning Policy Framework December 2023 (the Framework) at paragraph 155 indicates that certain material changes of use of land are not inappropriate, this is provided that they preserve the openness of the Green Belt and do not conflict with the purposes of including land within it.
20. The concept of openness has a spatial and visual aspect². The appellant points out that the vehicles parked beyond the gates are screened by the gates and landscaping on the western boundary, and that vehicles parked in front of the dwelling can only be seen from close proximity and are seen in the context of the buildings.
21. Whilst existing vegetation reduces the visual impact of the storage of large vehicles to a degree, their storage nevertheless impacts on openness, which is by definition harmful to the Green Belt. Whilst the degree of harm may be variable depending on the number of vehicles on the site and the activities associated with them at any one time, there is nevertheless harm arising from the inappropriate development. The appellant suggests a landscaping condition or a condition limiting the number of vehicles parked on the site would make the development acceptable. However these would not overcome the harm that has been identified.
22. As a new business, the development is contrary to Policy PSP28 of the South Gloucestershire Local Plan: Sites and Places Plan which supports the intensification, extension or alteration of existing businesses within the Green Belt, but not new businesses.
23. The appellant considers that in the absence of an identifiable alternative site, the appeal site offers a high level of security with it being in a residential curtilage, although no evidence has been submitted to show what attempts have been made to secure alternative premises. It is claimed that if the vehicles were parked off-site, the business would not be viable.
24. Reference is also made to other properties having extensive areas of hardstanding within their curtilages and to a nearby business park. In the light of this, the use of the appeal site cannot be said to have an urbanising affect. However, when weighed against the finding of inappropriateness, the appellant's preference to use his dwelling for business purposes and the nature of other development in the vicinity are insufficient to turn the planning balance in favour of the appellant.
25. The development represents inappropriate development for which there are no other considerations that amount to very special circumstances that outweigh this harm by reason of inappropriateness. The development is contrary to the Framework and to local policies, primarily Policies CS5 and CS34 of the South Gloucestershire Local Plan Core Strategy and Policy PSP28. The appeal on this ground fails.

The appeal on ground (f)

26. An appeal on this ground is that the requirements of the notice are excessive. The appellant suggests a restriction on the use of the hardstanding for use by residential vehicles only.

² Turner v SSCLG and East Dorset District Council [20916] EWCA Civ 466

27. The hardstanding in front of the dwelling was installed to facilitate the business. The purpose of the requirements of a notice is to remedy the breach by discontinuing any use of the land or by restoring the land to its condition before the breach took place or to remedy an injury to amenity which has been caused by the breach. It is necessary for the requirements to match the matters alleged and therefore I consider that the requirements of the notice in this case do not exceed what is necessary to remedy the breach.
28. The requirements do not preclude the appellants doing what they are lawfully entitled to do in the future once the notice has been complied with.
29. The appeal on this ground fails.

The appeal on ground (g)

30. An appeal on this ground is that the time to comply with the notice is too short and an eight month compliance period is requested to find alternative premises and remove the hardstanding.
31. The request by the appellant appears to be excessive and unjustified in the circumstances. If, as the appellant states, the vehicles are sold prior to them being stored for two weeks on-site awaiting collection, then it would not be unreasonable for them to be delivered direct to the customer or stored off-site. Removal of the hardstanding does not require an eight month compliance period.
32. The appeal on this ground fails.

Conclusions

33. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act (as amended).

P N Jarratt

INSPECTOR