

Appeal Decision

Site visit made on 17 September 2024

by V Bond LLB (Hons) Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 11TH OCTOBER 2024

Appeal Ref: APP/D0121/C/24/3345531

1 Council Houses, Downside Road, Backwell, North Somerset BS48 3DN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Corey Woodland against an enforcement notice issued by North Somerset Council.
 - The notice was issued on 23 April 2024.
 - The breach of planning control as alleged in the notice is Without planning permission, the material change of use of the land to a mixed use of residential use and the use of the land for the parking of cars connected with passengers of Bristol Airport.
 - The requirements of the notice are: 1. Cease the use of the land (outlined in red on the attached plan) for the parking of cars unconnected with the lawful residential use of the property; 2. Remove all cars that are unconnected with the lawful residential use of the property from the land (outlined in red on the attached plan); 3. Restore the land to the condition it was in before the breach took place.
 - The period for compliance with the requirements is: 35 days.
 - The appeal is proceeding on the ground set out in section 174(2)(c) and (g) of the Town and Country Planning Act 1990 (as amended).
-

Decision

1. It is directed that the enforcement notice is varied by the deletion of 35 days and its substitution with 2 months as the time for compliance. Subject to the variation, the appeal is dismissed and the enforcement notice is upheld.

The appeal on ground (c)

2. The appeal on this ground is that the matters alleged do not constitute a breach of planning control. The onus is on the appellant to make their case on the balance of probability. The appellant argues here that no material change of use ('MCU') has occurred and thus that there has been no breach of planning control.
3. A MCU represents development requiring planning permission under s55 of the 1990 Act¹ and established case law has held that for there to be a MCU, there needs to be a significant difference in the character of the activities from

¹ Town and Country Planning Act 1990

what has gone on previously as a matter of fact and degree in the relevant planning unit².

4. Section 55(2)(d) excludes from the definition of development 'the use of any buildings or other land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse'. Whether a use is incidental or whether there has been a MCU is a question of fact and degree.
5. In this case, the Council outlines that almost the entirety of the property's large front, side and rear gardens have been given over to airport parking. Numbers of cars parked on the property based upon the Council's inspections range from around 6 to 22 at any one time. Representations from interested parties also reference similar numbers of cars parked. None of this evidence appears to be disputed by the appellant by evidence to the contrary.
6. Given the evidence outlined and from what I saw at my site visit, the scale of the airport parking is far beyond a level which could reasonably be considered incidental to the enjoyment of the dwellinghouse. The appellant submits that given the size of the plot, there could be large numbers of cars parked for incidental residential use. However, the pattern of movement of vehicles parked by passengers using the airport is likely very different to that which would be usual for cars parked for incidental residential purposes. Typically, cars parked for the former remain in situ in a parking space for relatively long periods of time, coinciding with the usual durations of people going on holiday. As to the latter, whilst cars parked in connection with residential use are typically in situ overnight, during the day it is common for vehicles to be moved for travel to work, school or other errands.
7. The appellant draws my attention to guidance within the National Planning Practice Guidance ('Guidance') in relation to the renting of a parking space including when this will require planning permission. This is indicated to essentially depend upon two factors namely (i) whether a MCU has occurred as a result of the rental; and (ii) whether such rental would result in a breach of condition. The Guidance states that whether or not a MCU has occurred will depend upon 'whether a space is used in a significantly different way to how a parking space would normally be used (irrespective of the identity of the driver)'.
8. My assessment above was that the airport parking spaces are likely to be being used in a significantly different way to how parking spaces are commonly used for incidental residential purposes. I share the Council's approach also that guidance indicating that 'it should be possible to rent parking spaces without planning permission' is not intended to mean that an airport parking operation of the scale at the appeal property cannot represent a MCU.
9. I note the appellant's comment that the Council has not referenced any impact on living conditions of neighbouring residents. However, other environmental impacts are cited by the Council including effects on highway safety. Other planning consequences arising from the development are also cited by the Council including stemming from the airport parking use representing inappropriate development in the Green Belt. The appellant has

² There is no dispute here that the planning unit is the house plot as outlined in red on the notice plan

adduced no detailed evidence such as to counter these points, and I have no reason to take a different view from that of the Council on the available evidence.

10. Drawing all of these matters together, I find as a matter of fact and degree that there is a significant difference in the character of the activities from what has gone on previously and a MCU has occurred. No planning permission has been granted for this MCU and it represents a breach of planning control. The ground (c) appeal fails.

The appeal on ground (g)

11. The appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable. The notice stipulates a 35 day compliance period; the appellant requests a minimum period of 3 months.
12. Whilst I can understand the appellant's concerns of not wishing to cancel advance bookings and in relation to detrimental effects on his income, there is no evidence to suggest that customers using the appellant's airport parking would not be able to find alternative parking provision elsewhere. Equally, while I can appreciate there may be difficulty contacting some customers who are out of the country, there is nothing to suggest that customers would be out of the country long enough to render the 35 day period for compliance unlikely to be capable of being complied with.
13. That said, I am mindful that within the compliance period, the appellant would also need to restore the land to its former condition and this would need to occur after the site is cleared of unauthorised cars. Bearing in mind the large size of the plot and the works carried out to date, this would not be an insignificant task. As such, in my view a 2 month period would represent a reasonable time in which to enable the appellant to clear the site of unauthorised cars, to cancel advance bookings and to undertake remedial works to the site, whilst still bringing the harm arising from the development to an end relatively swiftly. The ground (g) appeal succeeds to this extent and I shall vary the notice accordingly.

Conclusion

14. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation.

V Bond

INSPECTOR