The Planning Inspectorate

Appeal Decision

Site visit made on 22 January 2018

by Sukie Tamplin DipTP Pg Dip Arch Cons IHBC MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 January 2018

Appeal Ref: APP/B5480/C/16/3168184
Kings Oak, Clay Tye Road, Upminster, Essex RM14 3PL

- 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 Keith Harvey (Monarch Removals) against an enforcement notice issued by the Council of the London Borough of Havering.
- The enforcement notice was issued on 18 November 2016.
- The breach of planning control as alleged in the notice is:
  (i) Without planning permission, the unauthorised change of use of land shown hatched in black on the attached plan use for storage of goods in connection with removal business.
  (ii) Without planning permission, the unauthorised storage of containers in the northwest part of the property shown hatched in black on the attached plan in connection with removal business.
- The requirements of the notice are:
  1. Cease using of the Land shown hatched in black on the attached plan for storage of containers in connection with removal containers; and
  2. Cease the use of the garages shown hatched in black on the attached plan for storage of goods in connection with removal; and
  3. Remove from the land all storage containers; and
  4. Remove all waste materials associated with removal of the storage containers.
- The period for compliance with the requirements is Two Months.
- The appeal is proceeding on the grounds set out in section 174(2) (a),(b),(c),(d) & (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with corrections.

The Notice

1. The allegation of the breach includes a typographical error and the reference to the northwest part of the property is inaccurate and unnecessary. Thus I correct these errors in my formal decision.

Appeal on Ground (b)

2. This ground of appeal is that the alleged development has not happened as matter of fact. The onus of proof lies on the appellant and the test is the balance of probability.

3. The appellant says in terms that, because there had been commercial use on the site prior to his purchase of the land in April 2007, he "continued a use for my Removal Business and placed containers on site for storage but only within the designated yard area".

4. The Council has provided aerial photographs dated May 2007, May 2010, July 2013 and 2016. There appear to be no storage containers visible in the first three photographs. In contrast the 2016 photograph shows a number of shipping or storage containers in about the same location as is illustrated on the Council's enforcement officer's photographs taken in April 2016, 7 months before the Notice was issued. I saw that the containers remained in place on the date of my visit in January 2018. In terms of the use of the garage building the appellant simply asserts that this has been used but provides no supporting evidence.

5. Accordingly the alleged development has occurred as a matter of fact and this is confirmed by the appellant's own testimony. Consequently the appeal on Ground (b) fails.

Appeal on Ground (c)

6. The appellant says under this ground that "there has not been a breach of planning control as the yard and buildings have been in use commercially since 1996". This is an argument I will consider under Ground (d).

7. In order to succeed on ground (c) the appellant must show, on the balance of probabilities, that the storage of 'removal' goods and storage containers at Kings Oak are not a breach of planning control. This could be because the works are not development or because they have deemed or express planning permission.

8. Turning first to the legislative provisions, Section 55 of the Act[1] says that development includes the making of a material change of use of any building or other land. In this case it is therefore necessary to consider whether there has been a material change of use. The appellant says that, prior to 2007, the property was used for the garaging and maintenance of cars which were hired for weddings and occasional other events. It appears that the then owner was advised to submit a planning application for this use but did not do so. I have no evidence to suggest that the wedding car use ever became lawful.

9. Irrespective of that situation, on the evidence of the appellant himself, part of the appeal site is now being used for storage, specifically in conjunction with a domestic removal business. This use falls within class B8 of the Use Classes Order[2] (UCO). Even if I accept the appellant's argument that the site was previously used for the wedding car hire that use was materially different to the uses that were on site on the day the Notice was issued and are continuing. The UCO says that use for a business for the hire of motor vehicles does not fall within any specified class (sui generis). Therefore even if I accept the appellant's argument, there has been a material change of use from a use which falls outside any specified class in the UCO to use as B8 storage. It is thus development.

10. Section 57(1) says that planning permission is required for any development of land. There is no evidence before me that planning permission has been granted or that the use benefits from deemed permission by reason of a development order.

[1] Town and Country Planning Act 1990 as amended
[2] The Town and Country Planning (Use Classes) Order 1987 as amended

11. By reason of Section 171A (1) of the Act the carrying out of development without the required planning permission constitutes a breach of planning control. Consequently the appeal on ground (c) fails.

Appeal on Ground (d)

12. This ground of appeal is that the development is immune from enforcement action by reason of the passage of time. The Notice was issued on 18 November 2016 and Section 171 B of the Act says that no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach. Thus to be immune the appellant would have to demonstrate, on the balance of probability, that the B8 use, specifically storage of containers and use of garage for goods stored in association with the removal activity commenced on or before 18 November 2006.

13. The appellant says that there has been unbroken commercial use since 1996 and in support of this he relies on a copy of a letter sent by the Council to the former owner of Kings Oak. The letter is dated 1 February 2006 and refers to a defective application for a lawful development certificate for the use of garages on the land to store and maintain cars hired out for weddings and occasional other events. It appears the application was not completed and did not progress. However the Council say that the then owner was advised that planning permission would be required. No such application was submitted.

14. The use claimed prior to 2007 appears to have been solely concerned with use of an existing building for the hire of motor vehicles. As I have noted above that use is materially different from the current use. Therefore when the site was sold to the appellant in April 2007 and the use for the hire of wedding and special occasion vehicles ceased a new chapter in the planning history commenced. Even if the B8 storage did commence almost immediately, and there is scant evidence to support this, this is less than 10 years before the date the Notice was issued.

15. Consequently the uses subject of the allegation are not immune from enforcement action and the Ground (d) appeal fails.

Appeal on Ground (a) and the deemed application

Main issues

16. The main issues in this appeal are:

- whether or not the development constitutes inappropriate development in the Green Belt;
- if the development is inappropriate whether or not the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify permission.

17. Kings Oak is within a ribbon of development along Clay Tie Road which lies to the east of the M25 and is within Metropolitan Green Belt. Although most properties along this road are residential there is a sprinkling of commercial uses between the houses.

18. The Council accept that Policy DC45 (Appropriate development in the Green Belt) of the Havering Core Strategy 2008 is inconsistent with the National

Planning Policy Framework (the Framework). In these circumstances paragraph 215 of the Framework says that the weight to relevant policies should be considered in the light of their consistency with policies in the Framework; accordingly limited weight should be given to this policy. Therefore the Council relies on the Framework, augmented by London Plan Green Belt policies, for policy direction in the Green Belt and this is the starting point for my decision on planning merits.

19. The Framework says that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. The essential characteristics of Green Belts are their openness and their permanence[3]. Openness is generally defined by an absence of built form.

20. Paragraph 90 of the Framework says certain forms of development are not inappropriate in the Green Belt provided they preserve the openness of the Green Belt and do not conflict with the purpose of including land in Green Belt. The use of the land for the storage of shipping containers does not preserve the openness of the Green Belt. The structures are bulky and readily visible and appear to be on the site all year round. Consequently, as matter of fact and degree, the development subject of the allegation is inappropriate development in the Green Belt.

21. Paragraph 87 of the Framework explains that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 88 says in turn that substantial weight should be given to any harm to the Green Belt and that very special circumstances will not exist unless the potential harm to the Green Belt, by reason of inappropriateness and any other harm, is clearly outweighed by other considerations.

Openness and any other harm

22. The gist of the appellant's argument is that he has reduced the size of the large garage on the site and replaced this with access and container storage which he suggests is a less intensive use than previous uses on the site. The evidence provided is scanty at best but by reference to the Council's aerial photographs it does appear that one bay has been removed from the garage building.

23. However given the number and spread of containers on the land I do not agree that the use is less intensive than that reported to be previously on the land. In particular the large number of containers have a greater adverse impact on openness. Moreover, the appellant has provided no evidence to support his assertion that the current use is less intensive in terms of activity. He says that he has a number of employees and thus, on the balance of probability, there is more on-site commercial activity than that associated with the wedding car hire which by its very nature would have tended to be intermittent.

24. In addition to this, the incongruous nature and appearance of the containers, which are industrial in character, are an uncomfortable anomaly in this Green Belt location. Whilst I acknowledge that there are other commercial enterprises in the locality this does not reduce the harm. Hence the loss of

[3] Paragraph 79: The National Planning Policy Framework

openness and industrial character adds to the harm caused by the containers that I have identified by reason of inappropriate development.

Benefits

25. The appellant says that it is inconsistent for the Council to take action now because it had previously advised that commercial usage was acceptable on the site. He also says that his business provides employment to an unspecified number of staff.

26. In terms of the first claimed benefit there is no evidence that the Council has encouraged the establishment of this or any other commercial business at Kings Oak. It appears that the Council did suggest that a planning application was submitted in 2005 in connection with the wedding car usage but this is to enable a balanced assessment to be made; it did not guarantee success.

27. In terms of employment this is a benefit that has arisen from the use of the site. However it appears that the business also operates at another site in South Ockenden where the appellant says that he keeps his vehicles. In these circumstances the cessation of activity on the appeal site may not result in the loss of employment opportunities and thus I accord only limited weight to this benefit.

The balancing exercise and conclusion

28. In carrying out the balancing exercise, I attach substantial weight to the harm that would be caused to the Green Belt by reason of inappropriate development. Added to this is the separate harm by reason of the loss of openness and the industrial appearance of the containers.

29. Although I acknowledge the support that the appellant has had from neighbours and the limited benefit arising from employment opportunities, these are insufficient to warrant very special circumstances which would outweigh the harm to the Green Belt. Consequently the ground (a) appeal does not succeed.

Appeal on Ground (g)

30. The appellant says that two months is insufficient to comply with the requirements of the Notice but does not give any explanation of this.

31. It seems to me that the physical works of removing the shipping/storage containers could be achieved in a matter of days and other goods associated with this use could be moved equally easily.

32. However it is possible that the appellant has contractual obligations to his clients who are using the containers to store their household effects, though none of these has been submitted in evidence.

33. In these circumstances I consider that the compliance period is proportionate and reasonable and the appeal on ground (g) also fails.

Conclusion and formal decision

34. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

35. It is directed that the Section 3 of the Enforcement Notice be corrected by:

    (a) the deletion of the word "use" in line two of 3.(i) between the words "plan" and "for"; and

    (b) the deletion of the words "in the northwest part of the property" in 3(ii).

36. Subject to these corrections the appeal is dismissed and 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.

Sukie Tamplin

INSPECTOR