The Planning Inspectorate

Appeal Decision

Inquiry held on 17 March 2015

by Mr Keri Williams BA MA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 30 April 2015

Appeal Refs: APP/Q0505/C/14/2222570 and 2222571
Land at 27 Babraham Road, Cambridge, Cambridgeshire, CB2 0RB

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr T Coppolaro and Mrs T Coppolaro against an enforcement notice issued by Cambridge City Council.
- The Council's reference is CE/5622.
- The notice was issued on 3 July 2014.
- The breach of planning control as alleged in the notice is the material change of use of a car-port garage extension for the storage of ice cream vans.
- The notice's requirement is to cease the use of the car-port garage extension for the storage of ice cream vans.
- The period for compliance with the requirements is 28 days.
- The appeals are proceeding on the grounds set out in section 174(2) (a), (c), (d) and (g) of the Town and Country Planning Act 1990 as amended. The applications for planning permission deemed to have been made under section 177(5) of the Act as amended also fall to be considered.

Summary of Decision: The appeals are allowed and the enforcement notice is quashed.

Preliminary Matters

1. Oral evidence was given at the Inquiry on oath. Applications for an award of costs were made by the appellant and by the Council. They are the subject of separate decisions.

Background and Relevant Planning History

2. No.27 is a detached house in a lengthy plot on the north side of Babraham Road. In April 1993 planning permission was granted for a 3-bay garage (Ref.C/0133/93). In August 1997 permission was granted for the use of the site as a dwelling house and for the storage of two ice-cream vans used for commercial purposes (Ref.C/97/0695/FP). Condition no.1 limited the number of ice-cream vans to be stored at the premises to 2. Condition no.2 said that *"The ice-cream vans, when not in use, shall be stored within the existing garage at all times with the doors closed."* Condition no.3 said that *"There shall be no deliveries to the premises associated with the ice-cream business."* Condition no.4 said that *"The garage shall be used for the parking of no more than two ice-cream vans and the parking of domestic vehicles only and for no other purpose without express consent to be given in writing by the local planning authority."*

3. In July 2001 permission was granted for the erection of a 2-bay car-port extension to the existing garage (Ref.C/01/0558/FP). The permission included no condition limiting the use of the car-port extension. An informative said that *"The car-port hereby approved may not be used for the storage of commercial vehicles without the express permission of the local planning authority."*

4. In June 2013 a Lawful Development Certificate (LDC) was granted on appeal (Ref.APP/Q0505/X/13/2193066). The certificate applied to the whole of the site. It set out in Schedule 1 that the following was lawful: *"The use of the property as a dwellinghouse and: (i) for the storage of up to 3 ice-cream vans for commercial purposes in the garage referred to in conditions 2 and 4 of planning permission reference C/97/0695/FP dated 20 August 1997 (the 1997 permission) and shown cross hatched on the plan "B" attached to this decision, but with the garage doors open in breach of conditions 1, 2 and 4 of the 1997 permission; (ii) for the acceptance of deliveries in connection with the ice-cream business, in breach of condition 3 of the 1997 permission; and (iii) for the stationing of a refrigerated storage unit, of a size equivalent to or smaller than the unit stationed on the site on 8 November 2012, as shown on the photograph attached to this decision, and located between the dwelling and the garage as extended."* LDC Plan A showed the site, Plan B showed the location of the garage and a photograph attached to the LDC showed a refrigerated storage unit.

5. The 3-bay garage is sited towards the front of the site, near the access from Babraham Road. The car-port extension which was approved in 2001 is attached to its northern end. It is open fronted, with 2 bays. One of them was occupied by an ice-cream van when I visited the site. Beyond that, and in front of the house, was a refrigerated storage unit, a mobile food kiosk and an area for vehicle parking. There is a domestic garden to the rear of the house.

6. The appellants acknowledge that 2 ice-cream vans have been stored in the car-port. They are high vans and require the additional clearance which they say the car-port extension was designed to provide. At the time of my visit, there was some use of the 3-bay garage for storage related to the business. Mr Coppolaro explains that ice-cream is not made at the premises but is delivered to the site. He stores his ice-cream vans and other items there and carries out cleaning of the vehicles and other activities related to his business at the premises.

The Enforcement Notice

7. In its legal submissions the Council suggests that I should vary the notice's allegation if I was to consider that the breach of planning control amounted to a breach of condition rather than a material change of use. The relevant condition is no.2 of the 1997 permission, which I set out above. It is not part of the Council's case that the condition applies to the car-port extension. Nor is that the appellants' view. Their evidence does not refer to this matter in detail. To vary the notice in this way would change the nature of the alleged breach. Had the notice alleged a breach of the condition the appellants may have responded with different and more comprehensive evidence and legal submissions. The appellants assert that to vary the notice in this way would therefore cause them injustice. The matter of whether the breach of control, if there was one, might be a breach of condition no.2 was drawn to the attention of the main parties in a Planning Inspectorate letter of 4 March 2014.

Nevertheless, I share the appellants' view that injustice would arise if the notice was varied in this manner and I shall not do so.

The appeals on ground (c)

8. To succeed on this ground it is for the appellants to show, on the balance of probabilities, that the matters alleged in the notice do not amount to a breach of planning control. In considering whether there has been a material change of use the correct planning unit must first be established. The whole of the appeal site is the unit of occupation. It is a readily identifiable physical unit and the mixed use for which permission was granted in 1997 takes place within it. It is also the basis of the 2013 LDC. It is not disputed by the main parties that it is the appropriate planning unit. I also take that view.

9. The Council's legal submissions address the effect of the 2013 LDC in clarifying and, in its view, restricting the 1997 permission. These submissions can be summarised as follows: LDC Plan B physically restricts the storage of ice-cream vans to the 3-bay garage but not the car port extension. The LDC does not encompass the whole site for the mixed business/residential use. The car-port, having been excluded from the LDC, is a domestic garage only. With the car-port extension excluded from the LDC for the storage of ice-cream vans, condition no.2 of the 1997 permission, concerning the number of vans that can be stored, does not apply to it. For these reasons, the breach of control is best characterised as a material change of use in the manner described in the notice.

10. These submissions do not seem to me to reflect the correct approach. The mixed use allowed by the 1997 permission applies to the whole site. LDC Plan A confirms that the 2013 LDC also applies to the whole site. There is nothing in the LDC to say that the part of the land occupied by the car-port extension is excluded or detached from the LDC as issued. Nor does the inclusion of LDC Plan B have that effect. The LDC certifies that the uses set out in its First Schedule were lawful on 23 July 2013 because the time for enforcement had expired. That included the storage of up to 3 ice-cream vans in the 3-bay garage. However, it does not follow from the issuing of the LDC that other uses of the site would not be lawful if carried out without planning permission. That would depend on whether those uses resulted in a material change of use. The extent of the relevant planning unit against which that should be judged falls to be determined in the normal way. In this case, as I set out above, it is clearly the whole site, as the Council acknowledges. Indeed, it seems to me that the Council's submission that the change of use should be considered on the basis of the car-port extension alone contradicts its acceptance that the relevant planning unit is the site as a whole.

11. I have also had regard to the Inspector's comments in paragraph 14 of the 2013 LDC decision. With regard to the storage of ice-cream vans in the car-port extension he said, having referred to the effect of condition no.2 of the 1997 permission that: *"the Council would have to consider whether it would be expedient to enforce against the storage of ice-cream vans within the 2-bay extension. Nevertheless, as I have not heard evidence of such storage for the relevant 10 year period, I cannot certify storage within that extension as lawful."* It seems to me that these remarks indicate that the Inspector was reaching no conclusion on whether such storage would be lawful.

12. The storage of ice-cream vans in the car-port extension takes place on a very small part of the site as a whole. It does not extend the range of the components of the mixed use approved in the 1997 permission, which included the storage of ice-cream vans. Nor does it extend the range of activities on the site which were set out in the 2013 LDC. The use of the appeal site and of the car-port extension has resulted in complaints from neighbours with regard to outlook and noise and disturbance, particularly from the occupiers of no.29 Babraham Road. Their concerns are confirmed in a representation of 24 December 2014. No.29 adjoins no.27 to the east. It is separated from no.27 by a boundary wall, with trees and other vegetation along the boundary. Windows on the side elevation of no.29 face towards the car-port extension and the 3-bay garage. An aerial photograph provided by the Council shows distances of 15.3 metres and 18.6 metres from the side elevation of no.29 to the car-port extension and the 3-bay garage respectively.

13. While I appreciate the concerns of the occupiers of no.29, it seems to me that any relevant noise and disturbance they experience is likely to result from the totality of the activities going on to the front of no.27. That would include, for example, the comings and goings of people and vehicles, including deliveries, and the cleaning or routine maintenance of ice-cream vans. The car-port extension has only 2 bays and the storage of ice-cream vans in it is unlikely, of itself, to result in a material change in the character of the use by reason of noise and disturbance. Some noise is likely from, for example, the running of engines when vehicles are parked. Although the car-port extension is a few metres closer to no.29, no substantive evidence is submitted to show that noise and disturbance resulting from of its use to store 2 ice-cream vans is likely to be materially different from use of the 3-bay garage, with its doors open, for storing up to 3 vans. Use of the car-port extension arguably releases space in the garage for other uses related to the business. However, the net effect would be similar if ice-cream vans were stored in the garage and the car-port extension used for other purposes within the scope of the 1997 permission and the LDC decision. Nor is there likely to be a marked difference in the effect on outlook if the car-port extension is occupied by ice-cream vans rather than other vehicles. No.29 is also near a major road so that traffic is likely to contribute to some extent to noise experienced by its occupiers.

Conclusion

14. I conclude that the use of the car-port extension for the storage of ice-cream vans has not led to a change in the character of the use of the site to the extent that it amounts to a material change of use. I find that what is alleged in the notice does not amount to a breach of planning control. Having regard to the above and to all other matters raised the appeals should succeed on ground (c). Consideration of the other grounds of appeal and of the deemed planning applications is therefore not required. The enforcement notice should be quashed.

Formal Decision

15. I allow the appeals and quash the enforcement notice.

K Williams

INSPECTOR

APPEARANCES

FOR THE APPELLANT: Mr P Krantz, Solicitor
He called:

Mr Toni Coppolaro	Appellant.

FOR THE LOCAL PLANNING AUTHORITY: Mr J Smyth, of Counsel
He called:

Ms S Dyer, BA, MRTPI	City Development Manager Cambridge City Council.

DOCUMENTS SUBMITTED AT THE INQUIRY:

1. Council's opening note.

2. Agenda item 9a, Report to South Area Committee, Cambridge City Council, 23 April 2014.

3. Letter from the Council to Mr Kratz, 12 March 2014.