



The Planning Inspectorate

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copy to local plans.
down (seaches)
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Your reference:
MTH/VB/Waterfield
Council reference:
EN 168
Our reference:
T/APP/C/92/L2820/618919/P6
Date: 27 DEC 92

Gentlemen

TOWN AND COUNTRY PLANNING ACT 1990, SECTION 174 AND SCHEDULE 6
PLANNING AND COMPENSATION ACT 1991--
APPEAL BY MR S WATERFIELD
LAND AT 121 STAMFORD ROAD, KETTERING

1. I have been appointed by the Secretary of State for the Environment to determine your client's appeal against an enforcement notice issued by the Kettering Borough Council concerning the above mentioned land. I have considered the written representations made by you and by the Council. I inspected the site on 10 November 1992.

2. a. The notice was issued on 8 April 1992.

b. The breach of control alleged in the notice is:- "The making of a material change of use of the Land from that of a residential dwellinghouse to the mixed use of the residential dwellinghouse and the storage of materials, equipment, tools, commercial motor vehicles, trailers in connection with the business of welding, steel erection and dismantling."

c. The requirements of the notice are:- "The discontinuance of the use of the Land for the storage of materials, equipment, tools, commercial motor vehicles, trailers in connection with the business of welding, steel erection and dismantling."

d. The period for compliance with the notice is 28 days.

3. The appeal is proceeding on grounds (a) and (f) of Section 174(2) of the 1990 Act as amended by the Planning and Compensation Act 1991, that is to say:-

(a) that in respect of any breach of planning control which may be constituted by the matters alleged in the notice, planning permission ought to be granted or, as the case may be, the condition or limitation ought to be discharged; and

(f) that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.



The Site and Surroundings

4. 121 Stamford Road is at one end of a short terrace of houses near the junction of Stamford Road and Edinburgh Road on the north-east side of Kettering.

5. The greater part of the curtilage of the property has been made into a concreted yard, from which double gates give access onto Stamford Road. At the north-western end of the site is a large garage. In this garage, and on a trailer in the yard, I saw a small amount of steel and equipment that could be used in a welding or steel erection business.

6. On two sides of the appeal site are factories. On the third side is a residential property with a small garden. Stamford Road is a busy, main highway.

The Appeal on ground (a) and the Deemed Application

7. From the written representations and my inspection of the site and surrounding area it is my opinion that the main issue is whether the use would cause material harm to the amenity of nearby residential occupiers by reason of noise or disturbance. In dealing with this issue, I have had regard to a recent appeal decision letter which dismissed an application for what was, essentially, the same use on the same appeal site (T/APP/L2820/A/92/-203567/P4). There is no evidence that circumstances have changed materially in the short period since that previous decision, which therefore carries very considerable weight in connection with the current appeal.

8. Policy 57 of the deposit version of the Local Plan provides that employment uses falling within Class B1, carried out within the curtilage of residential property, will normally be permitted, subject to various criteria including the impact on the amenity of residents of adjoining premises.

9. I appreciate that your client argues that the work he carries out at home is limited. Nevertheless, I am of the opinion that a business involving the movement and/or working of steel would not normally fall within Class B1, especially if any of the operations are carried out in the open. In my judgement, even the loading, unloading and stacking of steel within the concreted yard could well cause a significant amount of noise.

10. Both the house and garden at 123 Stamford Road are within a short distance of your client's yard and garage. In my view, the continuation of the use of the appeal site for the storage of materials, equipment and tools, in connection with a business of welding, steel erection and dismantling, would be likely to cause material harm to the amenity of the occupiers of the next-door property by reason of disturbance. I do not think that it would be practicable to control the precise amount of steel or equipment on the site, by means of conditions. Furthermore, I do not consider that the impact on neighbours could be made acceptable in this instance by conditions relating to hours of operation of the business. My overall conclusion on the main issue is that the use would cause material harm to the amenity of nearby residential occupiers by reason of noise and disturbance. The appeal on ground (a) and the deemed application will be dismissed for that reason.

Appeal on ground (f)

11. Your client wishes to retain the right to store small amounts of steel at the property. One ton of steel is referred to in the representations. In my opinion the use of the premises for even small-scale steel storage would be likely to give rise to disturbance. As mentioned above, it would be difficult in practice for the council to monitor and control the precise levels of steel storage.

12. In my judgement, it is not unusual for small, commercial vehicles to be parked overnight at residential properties. Your client owns a modest-sized "pick-up van" which he uses in the course of his work. He has explained the problems of attempting to park it in the highway. In the circumstances, I consider it would be appropriate to modify the requirements of the notice to allow one, small, commercial vehicle to be parked on the appeal site. To that extent the appeal on ground (f) succeeds.

Other Matters

13. In considering this appeal I have had regard to government policy on the encouragement of small businesses. I have also taken into account all the other matters raised in the representations. These factors are not sufficient to outweigh the reasons which have led to my decision.

FORMAL DECISION

14. For the above reasons, and in exercise of the powers transferred to me, I hereby direct that the notice be varied in Schedule 4 by adding, after the word "dismantling" the words "(but not including the use of the land for the parking of one commercial vehicle not exceeding 35 cwt in weight)". Subject to this variation, I hereby uphold the notice, dismiss your client's appeal, and refuse to grant planning permission on the application deemed to have been made under Section 177(5) of the 1990 Act.

RIGHT OF APPEAL AGAINST DECISION

15. This letter is issued as the determination of the appeal before me. Particulars of the rights of appeal against the decision to the High Court are enclosed for those concerned.

I am Gentlemen
Your obedient Servant

R L Muers

R L MUERS BA DipSocAdmin DipSocWork Solicitor
Inspector