



The Planning Inspectorate

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Your Reference:
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Council Reference:
MAS/EN/95/1419
Our Reference:
T/APP/C/97/L2820/646992
T/APP/C/97/L2820/648432
Date: 14 JAN 1998

Dear Sir

TOWN AND COUNTRY PLANNING ACT 1990, SECTION 174 AND SCHEDULE 6
PLANNING AND COMPENSATION ACT 1991
APPEALS BY MR K F STOREY
LAND AND BUILDINGS AT 7 CLIFTON GROVE, KETTERING, NORTHANTS

1. I have been appointed by the Secretary of State for the Environment to determine your client's appeals against two enforcement notices issued by the Kettering Borough Council concerning the above mentioned land and buildings. I held an inquiry into the appeals on 3 and 4 December 1997. The evidence was taken on oath. At the inquiry, an application was made on behalf of Mr Storey for an award of costs against Kettering Borough Council. This is the subject of a separate letter.

Notice 1 (T/APP/C/97/L2820/646992)

2. (1) The notice was issued on 24 March 1997.
- (2) The breach of planning control as alleged in the notice is: "Without the benefit of planning permission, the material change of use of the affected land to mixed residential, office and storage use."
- (3) The requirements of the notice are:
- (a) Remove all footwear stored in connection with the business from the affected land.

(b) Cessation of the use of the affected land for storage of footwear.

(4) The period for compliance with these requirements is 1 month.

3. Before the close of the inquiry, the council formally withdrew this Notice; (Document 4). I shall therefore take no further action in respect of the appeal against Notice 1 (T/APP/C/97/L2820/646992).

Notice 2 (T/APP/C/97/L2820/648432)

4. (1) The notice was issued on 14 July 1997.

(2) The breach of planning control as alleged in the notice is: "Without the benefit of planning permission, the material change of use of the affected land to mixed residential and commercial use, including the receiving, despatch and storage of commercial footwear, parking of commercial vehicles, the attendance of employees and the operation of an office."

(3) The requirements of the notice are:

(a) Remove all footwear stored in connection with the business from the affected land.

(b) Cessation of the use of the affected land for the storage of footwear.

(c) Cessation of the use of the temporary office building for commercial purposes.

(d) Cessation of employees attending the affected land.

(e) Remove all commercial vehicles from the affected land.

(f) Cessation of the use of the land for parking commercial vehicles.

(g) Cessation of the receipt and despatch of footwear to and from the affected land.

(4) The period for compliance with these requirements is 1 month.

Grounds of Appeal

5. In respect of Notice 2 your client appealed on grounds (a) (b) (c) (d) (f) and (g) of section 174(2) of the 1990 Act as amended by the Planning and Compensation Act 1991. However, as the prescribed fee has not been paid to the Secretary of State and the Local Planning Authority within the period specified, the appeal is proceeding on grounds (b) (c) (d)

(f) and (g) only.

The deemed application for planning permission, likewise, does not fall to be determined in the case of the appeal against Notice 2.

Appeal Site

6. The appeal site consists of a modest-sized, semi-detached house and garden in a residential street within the urban area of Kettering. On one side of the house is a driveway, leading to a detached brick garage positioned a little to the rear of the house. Behind the garage is a small, single-storey, wooden building.

7. At the time of my site inspection, the garage contained miscellaneous domestic items, in addition to pieces of equipment that could be used in the business of a market trader. The wooden building contained some furniture and equipment such as might be associated with a small office. There was also a bicycle. In the house, there was evidence that one room was being used at least partially as an office.

8. Clifton Grove is a fairly narrow street, with grass verges between the pavement and the carriageway.

Relevant Planning History

9. In 1989 planning permission was granted for: "erection of single storey office." This is the wooden building mentioned above. A condition provided that the building was to be removed after two years. The permission was renewed for a further two years in 1991, and for three years in 1994. That last permission expired on 22 March 1997.

The Appeal on ground (b)

10. The sole purpose of an appeal on ground (b) is to maintain that the matters contained in the council's allegation have not occurred as a matter of fact. This is quite separate from the question of whether what has occurred is on a large enough scale to amount to a breach of planning control. It was not denied that your client is a market trader dealing principally in footwear, and that he uses the appeal site for various purposes in connection with his business. I consider the details of what has occurred more fully in connection with the appeal on ground (c) below. For the purposes of the appeal on ground (b) it is sufficient to note that it is quite apparent that there has been at least some use of the site in the manner described in the enforcement notice. That being so, the appeal on ground (b) must fail.

The Appeal on ground (c)

11. I was told by your client that his business started in 1980. From that date he had a warehouse in Carrington Street, Kettering, where all footwear was stored. As a result of a

compulsory purchase order, he had to move out of the warehouse in 1989. It was about that time that the small, wooden, office building was constructed in the garden of 7 Clifton Grove. The council said that permission was given for the retention of this building, as a temporary measure, until alternative arrangements could be made. As far as storage of goods was concerned, your client said that he found a small lock-up unit, in Charles Street, Kettering. That was used until about 1994, since when it has remained empty.

12. It was explained to me by your client that neither the loss of the warehouse in Carrington Street, nor the cessation of the use of the lock-up unit, made any material difference to the level of activity at the appeal site. In summary, he painted a picture of a low-key, small-scale enterprise, having little impact on the locality.

13. At the inquiry I viewed an extensive series of excerpts from a video film of activities in and around the appeal site, made by two local residents. What I saw on those excerpts has been taken into account, together with the log of activities, also compiled by a resident. There was, in addition, a substantial amount of correspondence from the appellant and local people, despatch notes, other documentation and some photographs.

14. The reliability of the video was questioned. In particular, it was suggested that the dates shown on the film may be inaccurate in some cases. There is no certainty in these matters, but bearing in mind the extent of cross-referencing to the log which is possible, I find that on the balance of probability the video is likely to be reliable in that respect.

15. Operating a business from home does not necessarily bring about a material change of use of the relevant planning unit. Whether it does so is a matter of fact and degree. In assessing what occurred at the appeal site I have had regard to the guidance contained in Planning Policy Guidance Note 4, paragraph 33.

16. Although the council granted temporary permission for the retention of the office building, that building was intended to be used, and was used, for office or administrative purposes in connection with your client's business. The building is within the garden of 7 Clifton Road, and can only be accessed or serviced through the garden. I do not think any separate "planning unit" was created, and the relevant planning unit, in respect of which any change of use is to be assessed, is the whole of the appeal site.

17. To my mind, there was ample evidence at the inquiry that the nature of the business was such that, at some point after 1989, there occurred a material change of use of the whole planning unit including the area occupied by the wooden building to a new, mixed use for residential and commercial purposes, of the kind specified in the notice.

18. There can be no doubt that commercial vehicles, including large lorries, came to the premises as a result of the business. I believe that in this narrow residential street these vehicles would have had a noticeable, adverse impact on local amenity, and on the convenience of highway users generally. I am satisfied, on the balance of probability, that these vehicles were involved with both the collection and delivery of goods. (I do not accept that all or most deliveries were in connection with a separate business carried on by the appellant's wife.) In addition, it was quite apparent that goods were regularly unloaded from or loaded into your client's two vans, or transferred between the two vans. This process

sometimes took place in the road, and could involve lengthy obstruction of the footway, and the sight of piles of boxes in the front garden of the property. On the balance of probability, and taking account of what was on the video film and on the photographs, I also think it likely that significant quantities of goods were regularly stored in the garage. In my judgement, and leaving aside all effects arising from the use of the temporary office building, the intensity of the use and the level of activity generated by the business was very well in excess of anything that could be classed as "ancillary" or "not material". The character of the use of the planning unit altered. There was a material change of use for which permission was required but not obtained.

19. I was told that this footwear business has declined in recent times. This was partly a consequence of the effect of the BSE crisis on agricultural customers. Your client's wife, who used to assist with the enterprise, most unfortunately died in 1996. One son ceased to work in the business in February 1997 and the other in September 1997. A local resident agreed that in the year prior to the inquiry the level of activity had gradually declined, and it was now at an acceptable level. I have considered the effect of this evidence. On the available information, and on the balance of probability, I do not consider that, following the change of use of the land that had undoubtedly taken place, there was a further change of use by 14 July 1997. I do not think that it was demonstrated that the mixed commercial and residential use had definitely ceased, and been replaced by a single, residential primary use. In coming to that conclusion, I note that an interruption or diminution in business activity caused by economic circumstances does not necessarily mean that the use has ceased for planning purposes.

20. It was also explained to me that, in practice, the office building has not been used for office purposes for some considerable time. There were some contradictions in the evidence about the date when this use of the office building came to an end. Whichever date is accepted, this cessation would have been well prior to the date of issue of the notice. However, it is also evident that office work continues in the house, and that there is still some part-time secretarial help employed. This aspect of the case indicates to me that what is under consideration here is indeed a mixed use of the whole planning unit, with the various elements of the use intermingled, and shifting within the site. Given the location of the office work at the relevant time it was quite correct for the council to include within the allegation of a material change of use a reference to attendance of employees and the operation of an office.

21. In the light of all the above I conclude that the material change of use, as alleged, had occurred without the benefit of planning permission. The appeal on ground (c) fails.

The Appeal on ground (d)

22. The Certificate of Registration, under the Registration of Business Names Act, is dated 1980. It certainly does not provide either evidence that the business in question was wholly or mainly conducted from the appeal premises, or evidence of its extent.

23. Similarly, the letter from the Insurance Brokers may show that there was commercial vehicle insurance, presumably for vans, from 1986. It does not show that the relevant material change of use had taken place by that date. The vehicle registration document does

not do more than indicate that the business operated a van from 1986.

24. The letter of July 1997 from an employee is not helpful for any period prior to 1988, and in any event tends to support the view that, initially, the office work was carried out in Carrington Street.

25. On behalf of the appellant, great emphasis was placed on the claim that vans were always parked in the driveway of the house. I think it quite likely that there was some such parking from an early date, very possibly prior to 1989. However, as discussed at the inquiry, the mere overnight parking of a light commercial vehicle in the driveway of a house, if there is no other commercial activity associated with it, may not bring about a material change of use of the planning unit. The evidence available to me is insufficient to demonstrate on the balance of probability that whatever parking may have occurred caused a material change of use of the appeal site, to the use now being enforced against, more than 10 years prior to the date of issue of the notice. Indeed, it does not even demonstrate that there is a separate, primary, lawful use for the parking of commercial vehicles, that would need to be excluded from the operation of the notice. The appeal on ground (d) fails.

Ground (a) and/or the Deemed Application

26. It was argued on behalf of the appellant that it was not open to the council to take away the appellant's opportunity to have the deemed application considered by withdrawing Notice 1, and that it was inequitable for the council to seek to do so.

27. I reject this argument. The position regarding fees has been set out in paragraph 5 above. Following the withdrawal of Notice 1 there is no appeal against that Notice, and no deemed application, to consider. The fee in respect of Notice 2 was not paid in time, so the appeal on ground (a) has lapsed and, again, there is no deemed application to be considered.

The Appeal on ground (f)

28. In summary, the council's reasons for issuing the Notice related both to development plan policy and to issues of amenity. As already indicated in paragraph 18, I am satisfied that the material change of use has had an adverse impact on the convenience of highway users and on the amenity of local residents. It does not seem to me realistic to suggest that either the harm to the objectives of development plan policy or the injury to amenity could be remedied by anything less than the cessation of the unauthorised use. The steps required do not go beyond what is necessary to remedy the breach of planning control which has occurred, and which is contrary to development plan policy. It is also the case that in total they do not do more than what I would regard as necessary to prevent injury to amenity.

29. I brought the Mansi principle to the attention of the parties, and in the light of the comments made have considered whether it has any bearing on this situation. The council referred to Cord v Secretary of State for the Environment [1981] JPL 40. I believe the council is correct to argue that it is not necessary to provide special protection for obvious ancillary uses, such as might ordinarily be incidental to the use of a dwellinghouse. For that

reason it is not essential in this instance to exempt genuinely ancillary uses, such as may, possibly, be related to limited parking on the driveway or minor ancillary office work inside the house.

30. Finally, I have also considered whether any variation of the notice is needed to take account of the wooden building in respect of which the temporary planning permission has expired. I have already explained why I believe it was correct to identify in the notice a material change of use of the whole planning unit, including the area occupied by the wooden building, to a new mixed use for residential and commercial purposes, the elements of which were intermingled throughout the unit. That being the position, no variation is needed, and my overall conclusion is that the appeal on ground (f) fails.

The Appeal on ground (g)

31. At the inquiry, there was little comment on this ground of appeal. The council made it clear that there are alternative premises available for your client, if they were to be required. As I understand, the lock-up unit in Charles Street is also empty. All the same, one month is a very short time for your client to make any necessary arrangements. In these circumstances I consider the time given for compliance with the notice could properly be doubled to two months. The appeal on ground (g) succeeds to that extent.

Other Matters

32. Westminster City Council v Great Portland Estates plc 1984 3 W.L.R. 1035 was mentioned, with particular reference to personal circumstances and "the human factor". That case has most relevance to the question of "exceptional circumstances" in a situation where the possibility of planning permission is being considered. There is no such possibility in the current case. I can well understand the difficulties your client may have had in running this modest-sized business, and the viability of such businesses certainly deserves careful consideration. Nevertheless, consideration has also to be given to a proper and reasonable degree of protection of the amenity of local residents.

33. Reference was made to PPG18, and the suggestion was made that the council had been too hasty in taking enforcement action. Such matters are more relevant to the application for costs, dealt with separately. There is nothing in PPG18 that affects my opinion about the merits of the grounds of appeal with which I have to deal. I have considered all the other matters raised at the inquiry and in writing, but they are not sufficient to outweigh the reasons which have led to my decision.

FORMAL DECISION (T/APP/C/97/L2820/648432)

34. For the above reasons, and in exercise of the powers transferred to me, I direct that the enforcement notice be varied in paragraph 5 by the deletion of the words "one month" and the substitution of the words "two months".

Subject thereto I dismiss your client's appeal, and uphold the notice as varied.

RIGHTS OF APPEAL AGAINST DECISION

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

Yours faithfully

R L Muers

R L Muers BA DipSocAdmin DipSocWk Solicitor
Inspector