



The Planning Inspectorate

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Your Reference:
4435
Council Reference:
SH/EN/96/0077
Our Reference:
APP/C/98/L2820/650203
APP/L2820/A/98/291235
Date: 27 OCT 1998

Dear Sir

TOWN AND COUNTRY PLANNING ACT 1990, SECTIONS 78 AND 174 AND
SCHEDULE 6
PLANNING AND COMPENSATION ACT 1991
APPEALS BY GURDIP SINGH
LAND AND BUILDINGS AT 21 DYSON DRIVE, KETTERING

1. The Secretary of State for the Environment, Transport and the Regions has appointed me to determine your client's appeals against an enforcement notice issued by the Kettering Borough Council and a refusal of planning permission by the same Council, both concerning the above mentioned land and buildings. I conducted a hearing into the appeals on 29 September 1998 and inspected the site on the same day.

THE NOTICE

2. (1) The notice was issued on 16 January 1998.
- (2) The breach of planning control as alleged in the notice is without the benefit of planning permission the material change of use to a mixed residential and business use.
- (3) The requirements of the notice are:
 - a) Cease using the land for the parking, storage and maintenance of private hire vehicles;
 - b) Remove private hire vehicles from the land;
 - c) Cease employees/drivers visiting the land for commercial purposes;
 - d) Demolish and remove radio communications aerial from the land.



- (4) The period for compliance with these requirements is 2 months.

GROUNDS OF APPEAL

3. Your client's appeal is proceeding on the grounds set out in section 174(2)(a) and (f) of the 1990 Act as amended by the Planning and Compensation Act 1991.

THE APPEAL UNDER SECTION 78

4. The development for which the Council has refused planning permission is use for taxi business and residential and retention of existing 12m aerial. The development had occurred prior to the date of the application and I have dealt with this appeal as relating to an application under section 73A.

PRELIMINARY MATTERS

5. The Council raises the possibility of varying the notice to add to the allegation the words "including the erection of a radio communications aerial." This would introduce an operational element whereas the notice relates to a change of use. Also, I find no benefit in the change. It is well established that requirements can require restoration of land to the condition prior to a change of use. The aerial is integral to the use, so that in principle its removal can be included in the requirements without inclusion in the allegation. You do not dispute this. I will not vary the notice in this respect.

6. The notice refers to a business use without specifying it in detail, but your client is not in any doubt that the notice relates to the same taxi business as the planning application. It is therefore appropriate to deal with the ground (a) and section 78 appeals together.

GROUND (a), THE DEEMED APPLICATION AND THE SECTION 78 APPEAL

7. The development plan is the Local Plan for Kettering Borough. Policy 30 provides general guidance for new development. It indicates that development will be permitted where, among other things, there is no adverse impact on the character of the area and the amenity of nearby property. Policy 47 seeks to protect residential amenity and indicates that development having a significant adverse impact in that respect will not be permitted. Policy 53 relates specifically to Class B1 uses, which is not the type of use in this case. Nevertheless, the objective of the policy is germane. This is to support small enterprises run from home provided the scale is appropriate and there is no adverse impact on residential amenity, nearby residents, the highway network and such matters as parking arrangements.

8. In the light of these policies and from the evidence given and my inspection of the site, I consider that the main issue is the impact on neighbouring residential amenities and the residential character of the area stemming from the level of activity and the parking arrangements.

9. The appeal site is a detached house in a residential estate. It stands in a prominent position at the head of the original cul-de-sac of Dyson Drive. This is a residential estate road with footpaths on either side, which has been extended to serve new housing at the

Gardens. Due to the close arrangement of drives onto the road, there is limited parking space along the street in either Dyson Drive or the Gardens. In addition to a single garage, there are two driveways at your client's house which give standing room for 4 cars. Three of these spaces are in tandem, so that if fully occupied, vehicles from the outer spaces need to be moved to gain access to or from the inner spaces.

10. Your client has a hackney carriage licence for 4 vehicles. A radio and telephone are installed at the house occupying part of a utility room, to enable customer bookings to be taken by telephone and to provide contact with the drivers. The radio mast is on the rear of the house, close to an existing television aerial and, in my view, has no adverse visual impact on the surrounding area. Conversations on the radio need be no louder than use of a domestic telephone. I do not consider that the position of the radio is so close to neighbouring dwellings as to cause unacceptable noise from its use.

11. Whilst some nearby residents have not been disturbed, others complain of your client's employees parking their own cars on the street when out driving taxis, of disturbance from vehicles coming and going at unsocial hours and of repairs and valeting of taxis in the street. Council officers have not witnessed these problems and you supply bills for vehicle repairs at commercial garages. In view of this and as there is no evidence of the site being equipped for vehicle repairs, I do not place great reliance on the impact of taxi repairs alleged. Nevertheless, the generation of additional traffic to the site and parking in the street and the timing of such activity alleged are compatible with the nature and scale of the business, the manner of its operation at a time when not all your client's drivers had other provision for keeping the taxis and with the amount and layout of parking provision at the site. A photograph which you supply shows vehicles parked on the site, not just on the driveways but also on the grassed area in front of the house, together with a taxi in the road.

12. Bearing in mind the limited on-street parking space and close position of driveways, I consider that increased on-street parking due to your client's business has caused unacceptable inconvenience to other residents. I also consider that, given the quiet residential nature of the street, the additional activity from the movement of taxis and of employees' own vehicles has caused disturbance to residents, which is especially harmful due to the inclusion of unsocial hours. The concentration of parked vehicles at the site itself, adding to those associated with domestic use, in such a prominent position is visually dominating in the street and harmful to the residential character of the area. I therefore conclude that the retention of the use as an unrestrained taxi business would harm residential amenities and character contrary to the development plan policies.

13. You indicate that, in response to complaints and the Council's actions and as your client's business has become established and more effectively managed, the level of activity has been reduced. Since the planning application was made, a better understanding of the future requirements of the business has been reached. Accordingly you specify in detail the way in which your client wishes to operate and would find it practical to do so. Particular points which you emphasise are that three of the taxis are now kept at the homes of the drivers and this arrangement would continue. Only one taxi is now kept permanently at the site, its use being shared between an employee and your client. Most of the business stems from working from taxi ranks or being flagged down. Remaining calls are transmitted by radio. As the vehicles are licensed as hackney carriages, they may wait on taxi ranks

between calls and there is no reason for three of the taxis to visit the appeal site, other than once a week to bring takings.

14. In consultation on the planning application, the Highway Authority assesses the parking requirements for the residential element of the use as 4 spaces plus an optional boat/caravan space. The Council does not place reliance on this interpretation of the parking standards. These are set out in Supplementary Planning Guidance published with the Local Plan and for dwellings of this size require 3 spaces. Additional spaces may be required in appropriate circumstances, but there is no evidence to support that being the case here. Whilst your client's particular domestic parking needs cannot be controlled, the site is thus capable of providing parking above that normally required for residential use alone. The additional spaces would in my view be sufficient to cater for one taxi kept at the site together with the shift changeover periods when an employee's car may also need to be accommodated. Taking this into account, I consider that the reduced level of traffic to the site and parking requirements which you specify would not be so great as to cause unacceptable harm to residential amenities and character.

15. With regard to whether the reduced level of activity could be adequately controlled, the Council accepts that restricting the taxis kept at the site to one could be controlled by condition. Especially since the registration numbers of the hackney carriages licensed to your client are on record, I agree that such a condition could be readily monitored and enforced. Infrequently and for a short period, your client may need to keep a second taxi at the site when drivers leave his employment. The Council does not see this as creating an insuperable problem and it could be allowed for in a condition. The Council is concerned that, despite the manner of operation you outline, taxis and drivers could be encouraged by the presence of the taxi base to call more often at the site and that to survive businesses tend to expand. Whilst the frequency of visits could not be controlled, there are no facilities at the site for either drivers or customers and the use by licensed hackney carriages differs from private hire use, where the option to wait at taxi ranks is not available. I find no cogent reason for significantly more frequent visits per taxi to occur than you envisage. If more taxis were operated, there would come a point at which the cumulative impact of occasional visits by each taxi would significantly increase movements and parking on Dyson Drive, adversely affecting residential amenities. However, the scale of your client's business could be controlled by condition. This would restrict the business, but you emphasise that it is viable at its present scale and that your client has no intention to expand the business and would find such a restriction reasonable.

16. I therefore conclude that the development can be made acceptable by the imposition of conditions. Also bearing in mind the employment created by your client's business and the support in Planning Policy Guidance 4 and objectives of the Local Plan for small enterprises in residential areas where they can be carried on without harm, I intend to grant permission accordingly.

17. In addition to the conditions already considered, you and the Council agree that a restriction on servicing, valeting and maintenance would be appropriate and that the permission should be personal to your client. The first restriction is reasonable and necessary to protect residential amenities. As Circular 11/95 advises, personal permissions are seldom desirable. In this case however, I find that the development can be made

acceptable in a specific form. This arises from the nature of your client's business, for hackney carriage use rather than private hire, and from his particular personal circumstances as occupier of the dwelling. It is therefore appropriate to control these factors in a condition.

18. The appeals on ground (a) and section 78 succeed. The appeal on ground (f) does not therefore need to be considered.

19. In reaching my conclusions on the grounds of appeal I have taken into account all the matters raised but none is of such weight as to override the considerations which have led to my decision.

FORMAL DECISIONS

20. For the above reasons, and in exercise of the powers transferred to me, I allow your client's appeals and direct that the enforcement notice be quashed.

21. On the application deemed to have been made under section 177(5) of the amended Act, I hereby grant a personal planning permission for a limited period for the development already carried out, namely the use of the land and buildings at 21 Dyson Drive, Kettering as shown on the plan attached to the notice for a mixed residential and business use, subject to the following conditions:

1. The business use hereby permitted shall be solely in connection with a hackney carriage business licensed for not more than 4 vehicles and shall be carried on only by Gurdip Singh and shall be for a limited period being the period during which the site is occupied by Gurdip Singh. When the site ceases to be so occupied the business use hereby permitted shall cease.
2. No servicing, valeting nor maintenance of hackney carriages shall take place at the site.
3. The total number of hackney carriages kept at the site shall not exceed one, except with prior written notification to and written agreement by the local planning authority.

22. I hereby grant a personal planning permission for a limited period for use for taxi business and residential and retention of existing 12m aerial at 21 Dyson Drive, Kettering in accordance with the terms of the application (No KE.97.0614) dated 22 September 1997 and the plans submitted therewith, subject to conditions identical to those set out above.

23. Attention is drawn to the fact that an applicant for any agreement required by a condition of these permissions has a statutory right of appeal to the Secretary of State if agreement is refused, or granted conditionally or if the authority fail to give notice of their decision within the prescribed period.

24. These decisions do not convey any approval or consent required under any enactment, byelaw, order or regulation other than section 57 of the Town and Country Planning Act 1990.

RIGHTS OF APPEAL AGAINST DECISIONS

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

Yours faithfully



S M ROLSTONE BSc MA MRTPI
Inspector

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DOCUMENTS SUBMITTED AT THE HEARING

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| Document 1 | List of persons present at the hearing |
| Document 2 | List of persons notified of the hearing |
| Document 3 | Extracts from the Local Plan for Kettering and from SPG13 published with the plan |
| Document 4 | Letter from Mr & Mrs Stirzaker to the Council received on 12 August 1997 |
| Document 5 | Letter from the appellant to the Council received on 2 September 1997 |
| Document 6 | Business card supplied by the appellant |
| Document 7 | Second plan submitted with the planning application No: KE/97/0614 |