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## Appeal Decisions

by **Stephen Hawkins MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 01 May 2020

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**Appeal A Ref: APP/D1780/C/20/3246400**

**Appeal B Ref: APP/D1780/C/20/3246401**

**Land at the rear of 25 The Avenue, Southampton SO17 1XL**

- 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 H Mills (Appeal A) and Mrs B Mills (Appeal B) against an enforcement notice issued by Southampton City Council.
- The enforcement notice was issued on 13 January 2020.
- The breach of planning control as alleged in the notice is without planning permission, the change of use of the land from private amenity space to use for car parking.
- The requirements of the notice are: 1. Remove all vehicles from the land; and 2. Reinstall the boundary wall between the land and the rear of 26 The Avenue, to a height not exceeding two metres above ground level.
- The period for compliance with the requirements is 28 days.
- Appeals A and B are proceeding on the grounds set out in section 174(2) (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeals on ground (a) and the applications for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

**Summary of Decisions: The appeals succeed in part and the enforcement notice is upheld as varied in the terms set out below in the Formal Decision.**

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### Preliminary Matter

1. In response to travel restrictions currently in place due to the COVID-19 pandemic, I consider that these appeals can be determined without the need for a site visit. This is because I have been able to reach a decision based on the information already available. The appellants and the Council have agreed to the appeals proceeding on this basis.

### Background

2. The appeal site and its surroundings form part of The Avenue Conservation Area. The site lies to the rear of 25 The Avenue and at one time formed a major part of the residential garden of that property. A substantial wall forming the boundary with the vehicle parking area at the rear of 26 The Avenue (No 26) has largely been removed. The site has been surfaced with gravel and is now used for additional vehicle parking in association with the offices at No 26, which are occupied by a business providing social care services. An application for planning permission to use the site for additional vehicle parking was dismissed at appeal in November 2019<sup>1</sup>.

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<sup>1</sup> Ref: APP/D1780/W/19/3222397.

### Ground (f) appeals

3. The ground of appeal is that the requirements of the enforcement notice are excessive for their purpose.
4. At s173 (4), the Act provides that the purpose of an enforcement notice can either be (a) to remedy a breach of planning control, including by restoring the land to its condition before the breach took place, or (b) to remedy any injury to amenity caused by the breach. Although the notice does not state it explicitly, by requiring removal of all the vehicles and reinstatement of the wall its purpose clearly falls into sub-paragraph (a) above, as restoration of the site to its condition before the breach took place is required. In doing so, it is legitimate for the notice to require the undoing of works which were undertaken integral to and solely for the purpose of facilitating the unauthorised use, even where such works might if undertaken in isolation have not constituted development or been permitted development<sup>2</sup>.
5. According to the appellants, the boundary wall was removed in order to clear the site of accumulated rubbish, waste material and vegetation, required by a Council notice issued pursuant to the Prevention of Damage by Pests Act 1949 (PDPA). From the details provided, it is evident that the site was in a poor condition around the time of its acquisition by the appellants. I acknowledge that removal of part of the wall is likely to have been necessary to undertake the required clearance works, as the site was landlocked.
6. Be that as it may, it seems to me that it would have been possible to access the site in order to carry out the clearance works with relative ease, without removing most of the wall. Removing the wall has increased the accessibility of the site from the parking area at No 26 and has considerably improved its utility in terms of the unauthorised use for vehicle parking. It would have been less practicable to use the site for vehicle parking, had the wall not been removed to the extent it has been. As a result, I am not persuaded that it was necessary to remove most of the wall in order to comply with the PDPA notice. I am also mindful that the Inspector in the previous appeal expressed similar reservations in this regard. Although not conclusive, preparation of the planning application for use of the site for vehicle parking around the time the removal works were undertaken also suggests that the wall was removed to facilitate such use.
7. Therefore, based on the available evidence I conclude it is more likely than not that the wall was removed in order to facilitate the unauthorised use of the site for vehicle parking. It follows that unless the wall were to be reinstated, works which had facilitated the unauthorised use would not be undone, meaning that the notice would stop short of remedying the breach and would not achieve its purpose.
8. The appellants suggested that the planning harm identified in the previous appeal decision would be remedied by compliance with step 1 of the notice, as the vehicles would be removed from the site. However, as there is no ground (a) appeal and the purpose of the notice is to remedy the breach, the power in s176 (1)(b) to vary the notice to under-enforce is limited and the planning merits of the breach are not before me.

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<sup>2</sup> *Murfitt v SSE* [1980] JPL 598, *Somak Travel v SSE* [1987] JPL 630.

9. I acknowledge that reinstating the wall is likely to leave the appellants with future difficulties in accessing the site from the land at No 26, also in their ownership. Nevertheless, as a similar situation prevailed prior to the breach occurring, the appellants are no worse off as a result. Upholding the requirement to reinstate the wall does not prevent the appellants from exploring alternative options with the Council in respect of accessing and using the site.
10. Therefore, I find that the requirements of the notice fulfil the purpose of restoring the site to its condition before the breach took place and go no further than what is necessary to achieve that aim. The ground (f) appeals fail.

### **Ground (g) appeals**

11. The ground of appeal is that the time for complying with the notice requirements is unreasonably short. The compliance period specified is 28 days. Initially, the appellant sought an extension of that period to three months. However, I sought the views of both main parties on whether the period for compliance should be extended further, to reflect the national emergency caused by the COVID-19 pandemic and the ongoing uncertainty surrounding when restrictions placed on movement by the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 might be eased.
12. The Council suggested that the compliance period could be extended to four months. I am nevertheless mindful that for a significant part of that period there is still likely to be uncertainty surrounding how long the restrictions associated with the pandemic will continue. Furthermore, I am required to take into account the very important role played by the appellants' business in terms of caring for and safeguarding elderly and vulnerable persons during the pandemic. I am given to understand that there has been a recent increase in demand for the care services supplied by the appellants' business. In my view, there is a high probability of such increased demand continuing throughout the pandemic, meaning that the additional off-street vehicle parking provided by the site is likely to remain in regular use during that time. Curtailing the use of the site for vehicle parking whilst the pandemic continues is therefore likely to adversely affect the ability of the appellants' business to deliver very important care services during that time.
13. Consequently, based on the current circumstances, the six-month compliance period requested by the appellants would in my view strike a more appropriate balance between remedying the planning harm identified in the notice as soon as is practicable, whilst minimising as far as possible the effect on the appellants' business in terms of the ability to deliver important care services whilst the pandemic continues. It would also allow the appellants adequate time to seek and secure any necessary replacement additional off-street parking, and to arrange for and have the wall rebuilt.
14. The Council suggested that the appellants had been afforded ample time to seek the services of a contractor and have the wall rebuilt during the period between the previous appeal decision and the date of issue of the notice. However, the time before the notice was issued is not relevant in my assessment of the reasonableness of the period for compliance after the notice takes effect.

15. I have reached the above findings recognising that given the ongoing uncertainty regarding the duration of the pandemic, the current situation is likely to evolve and change in future and in particular there is a likelihood of a continuation in force of some or all of the current restrictions for a considerable period of time. In this respect I am also mindful that s173A (1)(b) of the Act affords the Council the power to extend the compliance period, should they consider that the circumstances at the time make it appropriate to do so.
16. For the reasons given above I conclude that the period for compliance falls short of what is reasonable. The appeals under ground (g) succeed to that extent.

### **Conclusion**

17. For the reasons given above I conclude that whilst the requirements are not excessive, a reasonable period for compliance would be six months and I am varying the enforcement notice accordingly, prior to upholding it.

### **Formal Decisions**

18. Appeals A and B are allowed on ground (g) and it is directed that the enforcement notice be varied by the deletion of "28 days" and the substitution of "6 months" as the period for compliance at paragraph 6. Subject to this variation the enforcement notice is upheld.

*Stephen Hawkins*

INSPECTOR