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# Appeal Decisions

by N Thomas MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 August 2020

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**Appeal A Ref: APP/L3815/C/19/3222041**

**Appeal B Ref: APP/L3815/C/19/3222042**

**Land at 6 Oakdene Gardens, North Mundham, Chichester, West Sussex**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
  - Appeal A is made by Mr Roger Mossop and Appeal B is made by Mrs Helen Mossop against an enforcement notice issued by Chichester District Council.
  - The enforcement notice, numbered NM/28, was issued on 10 January 2019.
  - The breach of planning control as alleged in the notice is without planning permission, change of use of the land to use for the storage of metal container units, cars, a motor bike, top box, fabric, shed, metal items, gas cylinders/bottles, car body parts, plastic chairs, trailers, towing cable, assorted metal and plastic containers, motor vehicle parts and other sundry items.
  - The requirements of the notice are:
    - (i) Cease the use of the land for the storage of metal container units, cars, a motor bike, top box, fabric, shed, metal items, gas cylinders/bottles car body parts, plastic chairs, trailers, towing cable, assorted metal and plastic containers, motor vehicle parts and other sundry items and remove all of the said items from the land, and
    - (ii) Remove the close boarded fence, gates and concrete posts that runs east to west (which divides the land from the dwellinghouse) in the approximate position shown on the attached plan.
  - The period for compliance with the requirements is 3 months.
  - The appeal is proceeding on the grounds set out in section 174(2) (b), (c), (d), (e) and (g) of the Town and Country Planning Act 1990 as amended.
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## Decision

1. The appeals are dismissed and the enforcement notice is upheld.

## Preliminary Matters

2. The appeal site is part of a larger area of land that was previously in use as a scrap yard. Eight dwellings have been built on the land following outline planning permission<sup>1</sup> and reserved matters<sup>2</sup>. The appeal site is shown on the approved drawings as the rear part of the rear garden to plot 8, and is now 6 Oakdene Gardens.
3. In paragraph 1.2 of the Council's appeal statement it refers to the site as being Kellys Farm, Bell Lane, Birdham. As the rest of the statement refers to the site as Land at 6 Oakdene Gardens it is clear that this is a drafting error and does not have any bearing on my decision.

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<sup>1</sup> Ref 15/01857/OUT

<sup>2</sup> Ref 16/01332/REM

4. In appeals on legal grounds, in this case grounds (b), (c), (d) and (e), the onus is on the appellants to provide all the relevant information and evidence to support their case, and the standard of proof is the balance of probability.

### **Appeals on ground (e)**

5. The ground of appeal is that copies of the enforcement notice were not served, as required by Section 172 of the 1990 Act.
6. The appellant argues he received a copy of the notice at his registered address on 26 January 2019, but Mrs Mossop did not receive a copy of the notice at her address in Gozo. Both Mr and Mrs Mossop received copies of the notice at 6 Oakdene Gardens on 3 February 2019.
7. The appellants have been able to lodge an appeal and provide evidence to make their case. I do not therefore agree that Mrs Mossop has been substantially prejudiced. The appeals on ground (e) therefore fail.

### **Appeals on ground (b)**

8. This ground of appeal is that the matters stated in the notice have not occurred. The appellants argue that the land is private property and that private items are stored on the land in the same way as other amateur racing car drivers in the UK. The appellants states that during December 2014 and January 2015 8 BT van backs (made of wood) were moved onto the land which was then separated with a fence from the garden of 6 Oakdene Gardens. The property was to be let out while the appellants were living abroad. The appellant does not dispute that the land is being used to store the items listed and is enclosed by a fence, and consequently the appeals on ground (b) must fail.

### **Appeals on ground (c)**

9. This ground of appeal is that the matters stated in the notice do not constitute a breach of planning control. The concept of a material change of use is not defined in statute or statutory instrument and therefore it is a question of fact and degree in each case. For there to be a material change of use, there needs to be some significant difference in the character of the activities from what has gone on previously.
10. In this instance it is necessary to ascertain the correct planning unit and the present and previous primary uses of that unit. The land was previously part of the wider site used as a scrap yard. The scrap yard use was extinguished when the permission to redevelop the site through the construction of eight dwellings was implemented.
11. The house is separately occupied to the appeal site, which has been fenced off from the garden and has a separate gated access point and letterbox. The appeal site is being used to store items belonging to the appellants, who do not live at No 6. This is therefore an entirely separate and standalone storage use on a separate unit of occupation, which is both physically and functionally separate. The fact that the appeal site and the dwelling at No 6 both belong to the appellants, who may move into the house in the future, does not indicate that the storage use is ancillary to the residential occupation of No 6, as the two units are used separately. The evidence therefore indicates that a separate planning unit has been created.

12. The use has materially changed the appearance of the site, as it is dominated by the storage containers and open storage, and the evidence indicates that this is apparent to the occupiers of neighbouring properties. This is not akin to the storage of personal items within a garden, as argued by the appellants. A separate storage use on the site may also involve additional activity and comings and goings, which affects the character and appearance of the site. I conclude that this is significantly different from the use of the land as part of the garden to No 6. Accordingly, a material change of use has occurred and the appeals on ground (c) fail.

#### **Appeals on ground (d)**

13. The ground of appeal is that at the date the notice was issued no enforcement action could be taken in respect of the matters alleged in the notice.
14. The time limit for taking enforcement action against development comprising a material change of use of this kind is 10 years, as set out in Section 171B(3) of the 1990 Act. As the notice was issued on 10 January 2019 it would therefore need to be demonstrated that the land had been used for storage of the items stated in the notice since 10 January 2009.
15. The appellants state that the van backs and contents were moved onto the land in December 2014/January 2015, while the Council received a complaint regarding the storage of scrap on the land to the rear of Plot 8 in October 2016. The Council has provided photographs showing the scrapyard being cleared on 20 April 2016 and a photograph showing vehicles, plastic chairs, gas cylinders and other items on the site dated August 2017.
16. It has not been demonstrated that the use has been carried on for the necessary period, and therefore the appeals on ground (d) fail.

#### **Appeals on ground (g)**

17. The ground of appeal is that the period for compliance specified in the notice falls short of what should reasonably be allowed. The notice specifies a period of three months for compliance. The appellants are concerned that this is insufficient to clear the site as they currently live abroad, and will mean that they have to throw away rare and valuable car parts.
18. However, the notice requires that the items be removed from the land, not that they be disposed of. They could therefore be stored elsewhere rather than thrown away. The three months' compliance period is reasonable, and the appeals on ground (g) fail.

*N Thomas*

INSPECTOR