
Appeal Decision

Site visit made on 9 March 2021

by N Thomas MA MRTPI

An Inspector appointed by the Secretary of State

Decision date: 19 March 2021

Appeal Ref: APP/P3610/C/20/3262630

Land at 56 Amis Avenue, West Ewell, Surrey KT19 9HU

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Steven Heather against an enforcement notice issued by Epsom & Ewell Borough Council.
 - The enforcement notice, numbered 20/00019/COU, was issued on 17 August 2020.
 - The breach of planning control as alleged in the notice is the use of the land for purpose of carrying on a garden waste, landscaping and house clearance business, on the land coloured blue on the attached plan within the land.
 - The requirements of the notice are:
 1. Cease the use of the front garden and driveway areas of the land, (the land coloured blue on the attached plan) for the storage of household clearance, landscaping and garden waste; and
 2. Cease the use of the front driveway of the land for the parking or storage of the pickup truck used in connection with the household clearance landscaping and garden waste business; and
 3. Remove all skips, and all items being stored on the driveway and front garden area of the land (the land coloured blue on the attached plan) in connection with a house clearance, landscaping or garden waste business.
 - The period for compliance with the requirements is 4 weeks.
 - The appeal is proceeding on the ground set out in section 174(2)(b) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice is corrected by:
 - Deletion of the words 'use of the land' and substitution of the words 'mixed use of the land for residential purposes and' in the allegation;
 - Deletion of the words 'for the storage of household clearance, landscaping and garden waste' and substitution of the words 'in connection with the household clearance, landscaping and garden waste business' in requirement 1.
2. Subject to the corrections, the appeal is dismissed and the enforcement notice is upheld.

Matters concerning the notice

3. Requirement 1 of the notice requires the use of the front garden and driveway areas of the land for the purposes specified to cease, but it does not specify that they are uses in connection with the business, as stated in the other two

requirements. This could be taken to prevent the storage of any items that are genuinely related to the residential use of the property.

4. I have wide ranging powers under s176(1)(a) of the 1990 Act to correct any defect, error or misdescription in the enforcement notice, and I am satisfied that correcting requirement 1 to specify the business use would not cause injustice to the parties.

The ground (b) appeal

5. The ground of appeal is that the matters stated in the enforcement notice have not occurred. The burden of proof lies with the appellant, and the test of evidence is on the balance of probabilities. The planning merits of the case and the personal circumstances of the appellant do not have any bearing on my decision.
6. The appellant states that the stationing of a skip in the front garden was purely for domestic use, during the refurbishment of his house and garden, and that it was not used in relation to his business. Any waste from his business has been disposed of at recycling centres rather than being brought to the property. The driveway has been used to park the appellant's pick-up truck in connection with his business, which is not unusual for someone who is self-employed.
7. The evidence indicates that significant quantities of waste including building materials and furniture have been present in the front garden over a period of time in 2019 and 2020, in the skip and elsewhere in the front garden.
8. The appellant has not provided any substantive evidence to demonstrate that the skip, the waste and materials stored have been solely in association with the residential use of the property and the refurbishment works to the house and garden. The very limited evidence put forward in support of the contention that the breach has not occurred falls well short of discharging the burden of proof. This leads me to conclude, on the balance of probability, that the commercial use has taken place.
9. However, it is not the case that the Council is alleging that the residential use of the land completely ceased, but rather that it was in a mixed residential and commercial use. The notice should therefore be corrected to refer to the mixed use. The residential use is lawful and is not required to cease. As the appellant states that the residential use is taking place, I can correct the notice without causing injustice. To this limited extent the appeal on ground (b) succeeds.

N Thomas

INSPECTOR