



Appeal Decisions

Site visit made on 14 June 2022

by Simon Hand MA

an Inspector appointed by the Secretary of State

Decision date: 20 June 2022

Appeal A: APP/D1780/C/21/3287575

Land at the rear of 2A Oakridge Road, SOUTHAMPTON, SO15 0LX

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Simon Reeves against an enforcement notice issued by Southampton City Council.
- The notice was issued on 28 October 2021.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the Land from residential curtilage (Use Class C3) to use for the storage and preparation for sale of motor vehicles (Sui Generis).
- The requirements of the notice are: (i) cease the use of the land for the storage and preparation of motor vehicles for sale; and (ii) remove all motor vehicles and materials associated with the unlawful use from the land; and (iii) reinstate a rear boundary structure in the location shown marked green on the attached plan.
- The period for compliance with the requirements is: 28 days.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (d), (f) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Appeal B: APP/D1780/C/21/3287582

Land at the rear of 10 Oakridge Road, SOUTHAMPTON, SO15 0LX

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Simon Reeves against an enforcement notice issued by Southampton City Council.
 - The notice was issued on 28 October 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the Land from residential curtilage (Use Class C3) to use for the storage and preparation for sale of motor vehicles (Sui Generis).
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 - The period for compliance with the requirements is: 28 days.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (f) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decisions

Appeal A: 3287575

1. It is directed that the enforcement notice is corrected by deleting the words "and preparation for sale" from the allegation and varied by deleting the words "and preparation" and "for sale" from requirement (i). Subject to that correction and variation, the appeal is dismissed, the enforcement notice is

upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B: 3287582

2. It is directed that the enforcement notice is corrected by deleting the words "and preparation for sale" from the allegation and varied by deleting the words "and preparation" and "for sale" from requirement (i). Subject to that correction and variation, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended

Applications for costs

3. Applications for costs were made by both parties and they are subject to a separate decision letter.

Background to the Appeals

4. The appeal sites were formally parts of the back gardens of Nos 2A and 10. Oakridge Road is part of a small housing area sandwiched between the railway to the south and the A33 dual carriageway to the north. The houses on the north side of the road have long back gardens that separate them from a strip of land next to the dual carriageway occupied by various commercial uses. One of those is a car sales operation owned by the appellant. Adjacent to that is a small office block, Surety House, that is now also owned by the appellant.
5. The first couple of houses on Oakridge Road have short rear gardens that back onto the car park for Surety House. No2A is the first long garden and the occupation of the rear two-thirds of it enables either access from Surety House car park which lies to its west or from the rear of the car sales yard that lies to its north.
6. Further along Oakridge Road, No10 stands in a row of houses with long thin gardens, and backs, like its neighbours onto the car sales yard. By occupying roughly two-thirds of the garden, the car sales use intrudes into the line of back gardens.

The Appeals on Grounds (b) and (c)

7. These grounds are the same for both appeals, in that the appellant says there is no 'preparation' of vehicles for sale on the either parcel of land and provides a statutory declaration to that effect from Mark Handscomb who runs the Diesel Car Company who are the appellant's tenants on the car sales site. DCC have been on the land since 2011 and always used it for parking cars, in the case of No2A those requiring attention and No10, those that have been sold and are awaiting collection or delivery. The appellant is clear that all mechanical work goes on in the workshops, as is required by a condition on the original planning permission for the car sales use.
8. The Council suggest that 'preparation' is a suitably vague word that can cover all manner of things, not necessarily just mechanical or valeting work, and that they were led to believe there was preparation going on by the original complainant. However, I have been given no evidence for any such works, or indeed anything except parking taking place. However, I can, as suggested by the Council, correct the notices to remove the phrase "and preparation for sale"

from both allegations and the first requirement of both notices. This does not change the appellants case or materially alter the allegation (the main issue is the noise and disturbance from parking and manoeuvring of vehicles) and so can be done without prejudice to either party. In which case the appeal on ground (b) fails.

9. Ground (c) is that the matters alleged benefit from planning permission, but that is clearly not the case, the last lawful use of the land is residential and planning permission is required for a material change of use to either B8 or a sui generis use so the appeal on ground (c) cannot succeed.

The Appeal on Ground (d)

10. This ground is that the use has been going on for more than 10 years and so is immune from enforcement. This argument is not raised for the land to the rear of No10 so this ground is for the land to the rear of 2A only.
11. The history of the site, according to the appellant is that in 2007 he purchased the land and immediately put down a gravel hardstanding and began using it for parking cars. In 2011, he leased the car sales to DCC, who have also used it continuously since. There has, therefore, been an unbroken use for parking of cars since 2007. However, the Council point out that in 2020 they carried out a site visit and the land was being used by a different company, Chapter 8 Traffic Management. They seem to have been based in Surety House, which had by then been purchased by the appellant. The rear yard to the car sales was fenced off and access created from the car park behind Surety House for the use of Chapter 8. Later, Chapter 8's lease was terminated and DCC began using the land again, for the same purposes as before.
12. If both these uses were the same, that is a B8 storage use, as argued by the appellant there would be no break in continuity. However, it is clear to me the use of the land for the parking of cars by the appellant and then by DCC was always in conjunction with the car sales use. That remained the dominant use on the site and any associated parking was ancillary to that use. There is no suggestion the land was used for a separate parking use that was not associated with the adjacent car sales. To apply the principles of Burdle, the land to the rear of Nos 2A and 10 formed part of the same planning unit as the car sales and its use for parking was ancillary to the car sales use. It is not disputed the car sales use is sui generis and so the use by Chapter 8 for a genuine B8 storage use marks a break in continuity.
13. Even if the requisite 10 years had been achieved before the break in continuity, the new unlawful use by Chapter 8 marked a new page in the planning history and the clock started again. When that use ceased, the clock was again started as there is no right to revert to a previous lawful use unless an enforcement notice has been issued. Thus the new car sales use begins again sometime in 2020 and clearly has not achieved the 10 years by the time of the issue of the enforcement notice in 2021. The Appeal on ground (d) fails.

The Appeals on Ground (a)

14. Only one local plan policy is relevant to this appeal, SDP1, which requires development to not "unacceptably affect theamenity of the city and its citizens". The issue is therefore whether the use of the two plots of land for car parking is harmful to the amenity of the residents nearby. In reality those

- mainly affected will be those whose gardens now border the enlarged car sales area.
15. Prior to the two back gardens being turned into parking the car sales plot ran along the backs of the gardens of the houses in Oakridge Road, so each house affected had a short stretch of fencing adjacent to car parking. No2A was slightly different as it had a wider garden that also had part of the car park of Surety House to its side, while the houses to its west had shorter narrow gardens backing onto the Surety House car park. There would always have been some disturbance from the day to day activities in the car sales site.
 16. Now, however, the potential for that activity to increase has been greatly extended. The garden of No2A is considerably shorter so cars are parked very close to rear of the house and could dominate the small remaining garden. Cars have also been introduced along part of the eastern boundary of the house next door to No2A to the west as that, small garden is now surrounded by the new car park used by DCC and the Surety House car park. The neighbour to the east also now has a car park all along the side of their garden and so close to their house and patio.
 17. The impact on No10 is similar, the new car parking is now close to the back of the house and dominates the remaining short stretch of garden, while both the neighbours to either side have a large section of boundary next to the car park whereas before it was garden.
 18. The appellant suggests that despite this, there is no actual harm. The occasional movement of cars to-and-fro would hardly be likely to cause "unacceptable harm", at best it might be occasionally annoying. Much is made of the fact that there is no actual evidence of any harm. I note there are no noise readings or counts of traffic movements, but that is not surprising in such a case. The simple fact is, had the appellant applied for planning permission to occupy the two back gardens for car parking it would never have been contemplated as reasonable due to the potential for disturbance to the people in their gardens and houses. On some days perhaps there are only a few vehicle movements, but on others the use of the land might be very busy. Even if the hours of use are controlled by condition, there can be no control over intensity; or whether engines are left running on cold days, or are revved up while manoeuvring, especially in the narrow confines of the land behind No10, or indeed what vehicles are parked there.
 19. There is already a steady, if distant, noise of vehicles using the dual carriageway so the area is not a quiet rural backwater, but in my view that makes the gardens and backs of houses even more vulnerable to increased disturbance. There is no doubt that even if the current use is very low level and quiet, that cannot be guaranteed in the future and the use of the two areas of land for car parking is contrary to the Council's policy. That harm cannot be satisfactorily controlled by conditions and the appeals on ground (a) fail.

The Appeals on Ground (f)

20. The appellant appeals on ground (f) which is that the requirements are excessive. In fact his arguments on this ground are essentially that planning permission should be granted subject to conditions which would control any potential harm. This is in effect a ground (a) argument and I have already dealt with it above. As I have concluded that planning permission ought not be

granted, the requirements (as varied) are simply what is needed to cease the use and return the land to its former state. The appeal on ground (f) fails.

Simon Hand

INSPECTOR