



Appeal Decisions

Inquiry held on 8 November 2022

Site visit made on 7 November 2022

by Nick Fagan BSc (Hons), DipTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 January 2023

Appeals A & B Refs: APP/H2265/C/21/3281643 & 3281644 The Bend, Riding Lane, Hildenborough, Tonbridge, Kent TN11 9LR

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended. The appeals are made by Mr Steven & Mrs Stephanie May respectively against an enforcement notice issued by Tonbridge and Malling Borough Council.
 - The notice was issued on 3 August 2021.
 - The breach of planning control as alleged in the notice is the material change of use of Green Belt land for the purposes of the open storage of vehicles (B8 use), and further unauthorised development of the land.
 - The requirements of the notice are to remove from the land hatched red on the attached plan (the Land): all vehicles, green tent building and storage shed, and hard surface.
 - The period for compliance with the requirements is: three (3) calendar months from the date the notice takes effect.
 - The appeals are proceeding on the grounds set out in section 174(2)(b), (c), and (d) of the Town and Country Planning Act 1990 as amended.
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Decisions

1. It is directed that the enforcement notice is corrected as set out in paragraphs 5-7 below.
2. Subject to these corrections, the appeals are allowed and the enforcement notice is quashed.

Application for costs

3. An application for costs was made by the appellants against the Council. This application is the subject of a separate Decision.

The Notice

4. Various aspects of the notice were discussed at the start of the Inquiry. In the description of the Land Affected By The Notice it refers to the property 'shown hatched grey on the attached plan.' However, there are two plans attached to the notice. The first is a smaller scale plan showing the whole of the Land cross-hatched pink. The second is a larger scale plan showing hatched red that part of the Land the subject of the requirements of the notice as set out above.
5. In order to clarify this, after the address of the Land the following phrase shall replace the existing wording: 'shown cross-hatched pink on the attached Plan 1.' On page 2 of the notice, immediately after What You Are Required To Do it shall state: 'Remove from the Land hatched red on the attached Plan 2:'. The

two plans described above shall be annotated accordingly with 'Plan 1' and 'Plan 2' so there is no doubt about which of the Plans is being referred to.

6. The description of the alleged breach is set out in the third bullet heading above. I consider it could and should be improved by the following wording: 'Without the benefit of planning permission, the material change of use of the land for the purposes of mixed residential (Class C3) use and for the open storage of vehicles'. This is because the land's Green Belt status is not relevant to the description of the breach itself, the use of the land alleged is in fact a mixed use because the appellants' house sits on it, and the Council accepts that the storage use is not a commercial/business use.
7. In the Reasons for Issuing The Notice, the first sentence refers to the breach of planning control having 'occurred within the last four years.' Clearly, given that the breach alleged relates to a material change of use, that is incorrect because section 171B (3) specifies that no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach regarding material changes of use. Accordingly, 'four years' must be substituted here with 'ten years'.

Reasons

Ground (b) and Ground (c)

8. Ground (b) is that the matters have not occurred. Ground (c) is that those matters (if they occurred) do not constitute a breach of planning control.
9. The Council's case at Inquiry was that, although no commercial/business use is alleged, a material change of use to the storage of vehicles has occurred within the last ten years, which is not incidental to the enjoyment of The Bend as a dwellinghouse.
10. An application for a Lawful Development Certificate (LDC) relating to the use of the western part of the Land, which contains the large tent and the shed, was refused on 26 July 2021, LPA Ref TM/20/02952/LDE. However, it is clear from the Council's case at the Inquiry this was solely on the basis that the alleged material change of use to store cars was taking place on it, rather than any allegation that it was not part and parcel of The Bend's garden and therefore part of its curtilage.
11. The Council does not dispute the appellants' evidence contained in their Summary of Vehicle Ownership and Summary of Car Usage documents (hereinafter referred to as the List)¹. Although the appellants admit that the number of vehicles on the site may vary, it is uncontested by the Council that the May family, including their three adult children who all live at the house, own and currently park the vehicles on the Land, albeit 2 of the 24 vehicles are currently parked elsewhere as Mr May made clear in his evidence. I saw most if not all of these vehicles during my site visit.
12. Mr May explained and has provided registration documents to confirm his and/or other family members' ownership of these cars and vans. The List details that all but five of them are MOT'd and insured. Of these five, as set out by Mr May in the List, his BMW convertible is stored elsewhere currently and only used in the summer, the 2 classic Land Rovers were purchased to

¹ Pages 0218-0221 of Appellants' Proof of Evidence

- renovate, the classic 1968 Chevrolet pick-up truck will be shown at car pageants and his wife's MG convertible sports car is currently being renovated.
13. He details that the number of cars has increased since 2012 when his eldest daughter turned 18 or learnt to drive, followed by his second daughter and then his son in 2014 and 2017 respectively. Of the 24 current vehicles, 9 of the 24 are Mr May's, 4 Mrs May's, 2 each for his two daughters (4 in total) and 7 for his son. He describes how the family have always had an interest in cars and that they all use different cars for different purposes, including some of the newer ones for driving into the London Ultra Low Emission Zone (ULEZ) for work. He made clear at the Inquiry that although the precise number of vehicles parked on the Land varies, 24 vehicles is typical of current numbers, given family members' needs and hobbies. I have no reason to dispute this.
 14. By the appellants' admission, 6 of these 24 vehicles, 3 of which are stored in Carcoon Storage Systems at the northern part of the Land, are collectable (including limited edition) vehicles, which are either being slowly renovated as a hobby shared by all members of the family (the two Land Rovers and Mrs May's MG Sports) or are special edition collectibles shown at car shows (Mr May's currently absent BMW convertible and the May daughters' Alfa Romeos).
 15. The Council disputes none of this. Quibbles by the Council about whether these vehicles have been parked or 'stored' are therefore irrelevant. Although it argues that the use of these cars, as detailed in the List, is implausible and farfetched, it has no evidence to counter it. Indeed, that the Council's witness had not even entered the site to ascertain the current situation for himself lent little credence to its case. The fact that some vehicles may not have been moved for months and covered in protective coverings does not contradict anything that the appellants raise in evidence in the List. All of these 24 vehicles belong to members of the family and most of them are used regularly. The few that aren't are either being restored or are shown at car shows and comprise the family's shared car hobby.
 16. The site is in the countryside, poorly served by public transport and the appellants and their family have a great interest in cars, in owning, driving and restoring them. Their evidence and that of their two friends² who acted as witnesses back that up. In contrast, the Council rely on three neighbours' objections from January 2021 that say, respectively, 'between 20-50', 'in excess of 30', and 'approximately 25-30' cars or vehicles have been stored, dumped or parked (sic) on the Land, as well as visits from previous enforcement officers in 2020 and 2021.
 17. However, as set out above, nothing that Council officers have seen on the site constitutes evidence that the vehicles have not simply been parked there incidental to the enjoyment of the dwellinghouse. Certainly, no evidence has been adduced that gives any credence to the neighbours' allegations that 30-50 cars have been stored or dumped on the Land.
 18. Section 55 of the Act sets out the meaning of 'development' and 'new development'. Subsection (2) is a list of operations or uses that shall not be taken for the purposes of the Act to involve 'development', including: '(d) the use of any buildings or other land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such.'

² William Gorringer & John Cowey

19. For the above reasons, the use that has occurred here is simply the parking of the May family's various vehicles, which is clearly a purpose incidental to the enjoyment of their family dwellinghouse. The appeals therefore succeed on ground (b) because no other separate storage of vehicles has been or is taking place. In light of this the appeals also succeed on ground (c), in that the parking of the family's cars on the Land incidental to the enjoyment of the dwellinghouse is not a breach of planning control. The notice, as corrected, is therefore quashed.
20. In coming to this decision, I have taken into account relevant caselaw as raised in the parties' advocates Closing Submissions.³ I acknowledge and accept the test in *Emin* that whether a use of a dwelling's land is incidental to its enjoyment does not 'rest solely on the unrestrained whim of him who dwelt there.' But I also accept that what is incidental to the enjoyment of a dwelling must be reasonable in terms of its nature and scale, the size of the dwelling and its garden, and the disposition, character and hobbies of the occupier, as confirmed in *Wallington*.
21. This is exactly what I have done in my assessment. I have taken into account the appellants List, the 5-bedroom house, its occupation by the 5 adults in the household, and its large garden. I have concluded that the family's use of the Land for parking their vehicles is reasonable. My decision to allow the appeals on grounds (b) and (c) flow directly from the circumstances of this case, rather than any inference that, say for instance 30-50 or a higher number of vehicles parked on the site would also be incidental to the dwelling's enjoyment.
22. The notice attacks the alleged material change of use and what is alleged to be the related operational development in terms of the green tent and storage shed near to the western access point as well as hard surfacing within the land adjacent to this access. Since I have decided that no material change of use has occurred and the notice is therefore quashed, this allegedly related operational development is not affected and can freely remain on the Land.

Ground (d)

23. Ground (d) is that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters.
24. As I have already allowed the appeals on grounds (b) and (c), ground (d) – which is only relevant to breaches of planning control – is irrelevant.

Conclusion

25. From the evidence before me, I conclude that the alleged breach of planning control set out in the enforcement notice is incorrect. The appeals succeed on grounds (b) and (c). Consequently, ground (d) does not fall to be considered.
26. The enforcement notice is corrected and quashed accordingly.

Nick Fagan

INSPECTOR

³ In particular *Emin v Secretary of State for the Environment* [1989] JPL 909 & *Wallington v Secretary of State for Wales* [1991] JPL 943

APPEARANCES

FOR THE APPELLANT: Kate Olley (Francis Taylor Building) called:

- Steven May
- Stephanie May
- William Gorringer
- John Cowey

FOR THE LOCAL PLANNING AUTHORITY: Rowan Clapp (Cornerstone Barristers) called:

- Francis Amekor, Senior Planning Officer for the Council