



Appeal Decisions

Site visit made on 24 January 2023

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18TH APRIL 2023

Appeal A Ref: APP/D3640/C/22/3292131

Appeal B Ref: APP/D3640/C/22/3292132

Land at Hall Grove Farm Industrial Estate, Bagshot, Surrey GU19 5HP

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended. The appeals are made by Ms Charlotte Woolridge of Wooldridge Group (appeal A) and Mr Brian Wooldridge (Appeal B) against an enforcement notice issued by Surrey Heath Borough Council.
- The notice, numbered 21/0059/ENF (Notice A), was issued on 23 December 2021.
- The breach of planning control as alleged in the notice is: Without planning permission the installation of a hard surface and additional operational development, including the erection of a metal security fences in excess of 2 metres and the erection on the land of a two (2) storey building, built from a combination of metal scaffolding materials and metal containers, to create a covered work area and site office.
- The requirements of the notice are:
 - i) Demolish the two storey building located in the green shaded area on the site location plan including all associated containers, structures and plant enclosed and incorporated within the building. Remove all associated scaffolding equipment including storage racks and portable units/containers from the land.
 - ii) Remove the fence from the area of land as shown on the site location plan.
 - iii) Following the completion of steps one and two above, remove the additional hard surfacing that has been installed on the site and restore the land to the state it was prior to the breach of planning control, as shown on the plan drawing: 'No. S/SH – 141/1.B, (SITE LOCATION AND SITE LAYOUT PLAN. Received 12.1.2001) on approved planning application reference 99/1020.' Attached to this notice¹.
 - iv) Following the completion of steps above, remove all materials, debris, waste and equipment resulting from compliance with the requirements of the notice from the land, to an authorised place of disposal.
- The period for compliance with the requirements is two months after the notice takes effect.
- Appeal A is proceeding on the grounds set out in section 174(2)(a), (e), (f) and (g) 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 1990 Act.
- Appeal B was proceeding on the grounds set out in section 174(2)(a), (e), (f) and (g) of the 1990 Act. Since the prescribed fees have not been paid within the specified period, the appeal in ground (a) and the application for planning permission deemed to have been made under s177(5) of The Act as amended, have lapsed. Accordingly, Appeal B is proceeding only on the ground set out in section 174(2)(e), (f) and (g) of the 1990 Act.

¹ Reference to a plan here and elsewhere in the header is to a plan attached the enforcement notices to which these appeals relate.

Appeal C Ref: APP/D3640/C/22/3292141

Appeal D Ref: APP/D3640/C/22/3292142

Land Lying to the East of Hall Grove Farm Industrial Estate, Bagshot, Surrey GU19 5HP

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended. The appeals are made by Ms Charlotte Wooldridge of Wooldridge Group (Appeal C) and Mr Brian Wooldridge (Appeal D) against an enforcement notice issued by Surrey Heath Borough Council.
- The notice, numbered 21/0059/ENF (Notice B), was issued on 23 December 2021.
- The breach of planning control as alleged in the notice is: Without planning permission the material change of use of the land to a mixed use of Commercial General Industrial activities (B2) and Storage of Plant/Machinery (B8), with associated unauthorised engineering operations including the significant alteration of land levels, the alteration and erection of earth bunds in excess of 2metres. Installation of a hard surface to facilitate the unauthorised use of the land and additional operational development without planning permission including the erection of fences in excess of 2metres.
- The requirements of the notice are to:
 - i) Cease the use of the land edged red on the site location plan, for general industrial (B2) and storage and distribution (B8) purposes;
 - ii) Cease the use of the land edged red on the site location plan, for the storage of heavy goods vehicles including tractor units, excavators and trailers, and remove all heavy goods vehicles, tractor units, excavators and trailers from the land
 - iii) Cease the use of the land edged red on the site location plan for the storage of industrial/commercial vehicles, and remove all industrial/commercial vehicles from the land
 - iv) Cease the use of the land edged red on the site location plan, for the storage of industrial/commercial plant machinery and other paraphernalia, and remove all industrial/commercial plant, machinery and any other paraphernalia from the land
 - v) Cease the use of the land edged red on the site location plan as a car parking area,
 - vi) Remove all of the Hard-core aggregate, sub-base and materials used to form the hard-standing area on the Land edged red on the site location plan
 - vii) Following completion of steps i)-vi) above, remove the Heras-type metal mesh fencing and dismantled the earth bunds as indicated on the site location plan and redistribute the earth in order that the state and level of the land is restored to the state it was prior to the breach of planning control, as shown on plan drawing: 'No. S/SH – 141/1.B, (SITE LOCATION AND SITE LAYOUT PLAN. Received 12.1.2001) on approved planning application reference 99/1020.' Attached to this notice.
 - viii) Following the completion of step vii). Above, any excess earth or Bund materials to be disposed of and removed from the site, to an authorised place of disposal.
 - ix) Following compliance with the above steps, remove all materials, debris, waste and equipment resulting from compliance with the other requirements of the notice from the land and its environs before re-seeding the earth with a native species grass seed mix.
- The period for compliance with the requirements is three months after the notice takes effect.
- Appeal C is proceeding on the grounds set out in section 174(2)(a), (e), (f) and (g) 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 1990 Act.
- Appeal D was proceeding on the grounds set out in section 174(2)(a), (e), (f) and (g) of the 1990 Act. Since the prescribed fees have not been paid within the specified period, the appeal in ground (a) and the application for planning permission deemed to have been made under s177(5) of The Act as amended, have lapsed. Accordingly, Appeal B is proceeding only on the ground set out in section 174(2)(e), (f) and (g) of the 1990 Act.

Summary Decision: All appeals are allowed and the enforcement notices are quashed

Preliminary Matters

1. Appeal A and Appeal B were not formally linked to Appeal C and Appeal D. However, the appellants for these two sets of linked appeals are the same. The sites are adjoining and there are similar issues to consider, particularly in the case of the validity of the notice and the ground (e) appeals. Accordingly, it is appropriate to consider these appeals together in the same decision notice.
2. I have a number of concerns with regard to the validity of both Notice A and Notice B. I prepared a note outlining these concerns, which was sent to the main parties in this case in order to seek their comments on a number of matters. I have had regard to the comments received in reaching my decision.

The Notices

3. Before considering the grounds of appeal on all appeals made, I have a duty to put the notices in order, if necessary. The powers transferred to Inspectors under section 176(1)(a) of The Town and Country Planning Act 1990 as amended (the 1990 Act) include to correct any defect, error or misdescription in the enforcement notice or, under section 176(1)(b), to vary the terms of the enforcement notice. In each case, the only test is whether the correction or variation would not cause any injustice to the appellant or the local planning authority.

Notice A – Appeals A and B

4. The allegation in the notice refers to several matters. I have separated these out as follows:
 - i. The installation of a hard surface;
 - ii. Additional operational development;
 - iii. The erection of a metal security fences in excess of 2 metres; and
 - iv. The erection on the land of a two (2) storey building, built from a combination of metal scaffolding materials and metal containers, to create a covered work area and site office.
5. I deal with each of these matters in turn, as follows:
- Hard Surfacing
6. This first part of the allegation is of the installation of a hard surface. The location of this is not, however, specified in the notice. The land to which the notice relates is identified outlined in blue on the plan attached to the notice. At the site visit I noted that there are several hard surface areas throughout the blue land. On its face, the notice targets all of these areas of hard surfacing.
7. The Council have confirmed that it had intended the notice to target only an area of hard surfacing in the easternmost part of the site. It has provided a plan showing an area highlighted red, which is close to the building identified in green. As drafted, the notice is not sufficiently precise, such that its recipient

would be reasonably certain that this red highlighted area of the site is the target of the notice. The notice is, therefore, defective in this regard.

8. Whilst the allegation could be corrected so that it only refers to hard surfacing in the area highlighted red on the amended plan, I can only do so if injustice would not be caused to either party. On this matter, I note in their response to my note that the appellants suggest that planning permission has been granted for hard surfacing in the red highlighted area. They refer to planning permission reference 99/1020. They have also provided evidence to support this.
9. Whether or not permission has been granted for development that is the subject of an enforcement notice is a matter that ought to be considered under a ground (c) appeal, which is that the matters stated in the enforcement notice (if they occurred) do not constitute a breach of planning control. The appellant has not, however, made an appeal on ground (c). Whilst I note that the planning permission referred to by the appellants has been mentioned in the evidence of all parties, I cannot be satisfied that a proper case has been made by the main parties in response to a ground (c) appeal.
10. In view of the above, I am unable to correct this defect in the notice in the manner suggested by the Council, as to do so would cause injustice to the parties in this case. Furthermore, no other corrections that would overcome my concerns are obvious to me. It does not, however, follow that the notice will be quashed for this reason. The allegation of the installation of a hard surface is discrete. Accordingly, I intend to correct the defect in the notice by removing reference to a hard surface, as well as removing the associated requirements. In doing so injustice would not be caused to either party, particularly in view of the provisions of section 171B(4) of the 1990 Act that allow for the issue of a further notice, should it be considered expedient to do so.

- Additional Operational Development

11. The notice refers to 'additional operational development', which it says includes fences and a building. This suggests that these matters, in addition to hard surfacing, are not the only operational development that the notice is intended to target; that there is some other operational development that is also the subject of the notice. The notice is not, therefore, sufficiently precise in this regard.
12. The Council has confirmed that the notice is only intended to target hard surfacing, fences and the building. It is clear that the appellants have understood this. Accordingly, I am satisfied that I can correct the notice to remove reference to additional operational development without causing injustice to any party.

- Fences

13. The allegation refers to the erection of metal security fences (plural). Again, I noted fencing along the boundaries throughout the land outlined in blue. Whilst the location of the fences intended to be the target of the notice is not specified in the allegation, requirement 5ii) refers to a fence (singular) in the

location shown on the site location plan. The plan attached to the notice has been annotated with two solid lines and the word 'ii) fence'.

14. On its face, the notice can be regarded as targeting a fence erected in the location shown on the plan. However, the allegation might be more precise if it referred to a single fence, as well as referring to its location on the plan attached to the notice. Furthermore, I saw both a fence and a set of gates in the location indicated on the enforcement notice plan. The notice might also be more precise if the allegation were to refer to a fence and gates in this location, and the requirements were to remove both the fence and gates.
15. I am satisfied that the plan attached to the notice adequately identifies the approximate location of the fence and gates that were the intended target of the notice. Furthermore, the appellant has clearly understood that the notice had intended to target both the fence and gates in this location. I am, therefore, satisfied that I can correct the allegation and vary the requirements of the notice insofar as they relate to the fence without causing injustice to any party. Such a correction and variation would be in the interests of precision.

- Building

16. The appellants' concerns with regard to the allegation of the erection of a two storey building relate to the location of the building as identified on the plan attached to Notice A. In their grounds of appeal, the appellants say that the land outlined in blue on the plan attached to Notice A and the Land outlined in red on the plan attached to Notice B coincide with 'land ownership'. They say that the 'actual location of the building referred to in the notice falls partly within the ownership of the adjacent landowner'. They do not suggest that the building is not at all within the land to which Notice A relates; rather that it straddles the Notice A land and some other parcel of land. They do not, however, say whether this other land is that subject of Notice B or some other parcel of land.
17. Whilst I note the appellants' claims, I have no evidence to substantiate what they say. The HM Land Registry details I have been provided with do not assist in this matter as they do not include the title plan showing the extent of land to which the titles relate. If the location of the building as shown on the plan is inaccurate, I have not been provided with details showing the true location of the building in question in order for me to compare this with the plan attached to the notice. There is nothing before me to demonstrate that the plan attached to the notice is so inaccurate as to render the notice invalid, such that I can conclude that the recipient of the notice would not be reasonably certain of what they have done and what they must do to remedy it.
18. Notwithstanding this, the notice would be more precise if this part of the allegation were to refer to the building's approximate location shown on the plan.

Notice B – Appeal C and Appeal D

19. Again, the allegation in Notice B refers to several matters, which I have separated out as follows:
 - i. The material change of use of the land to a mixed use of Commercial General Industrial activities (B2) and Storage of Plant/Machinery (B8);

- ii. Engineering operations including the significant alteration of land levels, the alteration and erection of earth bunds in excess of 2metres;
 - iii. Installation of a hard surface to facilitate the unauthorised use of the land; and
 - iv. Additional operational development without planning permission including the erection of fences in excess of 2metres.
20. I have concerns regarding three elements of the allegation and the associated requirements. I deal with each in turn as follows.
- *Change of Use*
21. I note reference in the allegation to '(B2)' and '(B8)'. I assume that these are use classes of The Town and Country Planning (Use Classes) Order 1987 as amended (the 1987 Order). If so, a mixed use is one that does not fall within any particular class of the 1987 Order. Although not a critical matter, the notice might be more precise if reference to classes of the 1987 Order were omitted from the allegation.
22. I also find the allegation of 'Commercial General Industrial activities' to be a little vague, particularly as reference has been made to Class B2 of the 1987 Order which is for a general industrial use alone, rather than a commercial and general industrial use. I am not clear what is meant by the word 'commercial' in this context and the Council has not clarified this.
23. Turning to the associated requirements, as a general point the requirements of a notice should be consistent with the allegation. This is not so with requirements 5.i) to 5.v). Although a matter of precision, 5.i) does not require the cessation of the mixed use as alleged. Furthermore, whilst 5.iv) requires the cessation of the use of the land for 'the storage of industrial/commercial plant machinery', 5.ii). and 5.iii). require the cessation of the use of the land for the storage of other items. Again, these requirements are not consistent with the allegation, not least because there is no allegation of the material change of use of the land to a single use for the storage of heavy goods vehicles or the material change of use of the land to a single use for the storage of industrial/commercial vehicles. Similarly, 5.v). requires the cessation of the use of the land as a car parking area, yet there is no allegation of such a use of the land.
24. The appellants have not objected to a change to the storage element of the mixed use, suggesting this be corrected to allege the 'storage of heavy goods vehicles, commercial vehicles, commercial plant and machinery'. They have also suggested the replacement of requirements 5.i). to 5v). with a single requirement that is consistent with the allegation. This is a more precise description of the storage element of the mixed use I observed on site and would clearly relate to such items as tractor units, excavators, and trailers, as listed in the requirements of the notice. I also note that the Council do not object to the removal of requirement 5v). Accordingly, I am satisfied that if the notice were to be corrected and varied as suggested by the appellants, injustice would not be caused.
25. Notwithstanding the above, in their response to my note the appellants suggest that the allegation of a mixed use is not correct. They say that the land is not

used for 'commercial general industrial activities'. This is a matter that ought to be considered within the context of a ground (b) appeal, which is that the matters stated in the notice have not occurred. An appeal has not, however, been made on ground (b) and the appellants have made this claim after the deadline for the submission of all evidence in this appeal, including final comments.

26. It is open to me to consider a ground (b) appeal, and give the Council an opportunity to comment on the claims made by the appellants. I have not, however, done so for reasons that will become clear later in this decision.

- Engineering Operations

27. Where the notice refers to engineering operations, it lists two operations, namely alterations of land levels and the erection of earth bunds. Again, the word 'including' is used in this part of the allegation, suggesting that some other engineering operations, other than the two matters listed, have been carried out at the site. As the Council has confirmed that no other engineering operations are intended to be the target of the notice, I will correct it to specify only the two engineering operations listed. In doing so I am satisfied that injustice would not be caused to any party.
28. On the matter of the bunds, on site I noted an earth bund around most of the perimeter site. Some of this appeared to be less than 2 metres in height. I have read the notice as targeting the entirety of the bund as a single operation. In which case, reference to the 2 metre height might be regarded as being a little ambiguous and imprecise.
29. In the interests of precision and clarity, I intend to correct and vary the notice as outlined above. Having had regard to the parties' comments on such a correction and variation, I am satisfied that no injustice would be caused.

- Additional Operational Development

30. Again, the word 'including' suggests that some other operational development, other than that specifically referred to in the notice, has been carried out at the site. The Council has confirmed that no operational development, other than that specified (i.e. the Heras type metal fencing), is intended to be the target of the notice. As above, I am satisfied that no injustice would be caused were I to correct this part of the allegation to refer only to the Heras type metal fencing in excess of 2 metres.

Ground (e)

31. An appeal on ground (e) is that copies of the enforcement notice were not served as required by section 172 of the 1990 Act. The appellants have made a ground (e) appeal against both Notice A and Notice B. Their case is simply put, that parties listed in the notices with a material interest in the land were served with copies of Notice A and Notice B that were not complete. They say that the copies of the notices served were missing pages that included part of the reasons for the issue of the notices, the requirements of the notices and the time for compliance. Notwithstanding this, the appellants say that they were aware of their right to appeal and have confirmed that their representative received a complete electronic copy of both notices.

32. The Council say that the notices were served on 'the registered owners and interested parties' either by recorded delivery or personally. The Council does not, however, dispute that the copies of the notices it served were incomplete. Neither does it say whether or not it subsequently sent all other parties listed in each notice a complete copy of the notices, electronic or otherwise, as it did with the appellants.
33. In view of the above, I cannot be satisfied that all parties listed in each notice received a complete copy of the notice, either before or after the expiry of the time to make an appeal. Save for the appellants, the parties would not, therefore, have known all reasons for the issue of the notice and what must be done to comply with it. Such information is essential for the recipient of a notice to decide whether or not to make an appeal. The information that was missing in the notices served was particularly important for an appeal made on grounds (a), (f) and (g)².
34. It may well have been the case that, even if they had received a complete copy of each notice, these other parties would not have made an appeal. Indeed, I note that none of the other parties have stepped forward to suggest that they would have done so. The absence of such representations is not, however, sufficient for me to conclude that they are unlikely to have made an appeal. Accordingly, I can only conclude that these parties have been substantially prejudiced by not being served with a complete copy of Notice A and Notice B. This is not least because I do not know whether or not these other parties have **ever** been provided with a complete copy of the notices.
35. Notwithstanding the above, the Council suggest that it sought to 'overserve' by sending a copy of each notice to 'all addresses known to exist on site'. The Council say that it did so, even though these parties 'were not separately listed on land registry as leaseholder or otherwise having a material interest'.
36. Section 172(2) states that a copy of an enforcement notice shall be served (a) on the owner and on the occupier of the land to which it relates; and (b) on any other person having an interest in the land, being an interest which, in the opinion of the authority, is materially affected by the notice.
37. I note that the majority of those served with a copy of Notice A and Notice B are not mentioned on the HM Land Registry details relevant to these notices. This is not, however a decisive matter in this case. Whether or not a person is mentioned on a HM Land Registry record depends on the nature of their interest in the land to which the record relates. Accordingly, an occupier of land, or person with an interest in land for the purposes of section 172(2) of the 1990 Act, may not necessarily be listed on the HM Land Registry records.
38. With regard to Notice A, both appellants are listed as having been served with a copy. The majority of the remaining parties served with a copy of Notice A are listed as being the owners or the occupiers in terms of their interest in the land. Accordingly, the requirement to serve on these parties a copy of the

² Section 174(2) of the 1990 Act - (a) that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted or, as the case may be, the condition or limitation concerned ought to be discharged; (f) that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach; and (g) that any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed.

notice falls squarely within section 172(2)(a) of the 1990 Act. My finding, that these other parties have been substantially prejudiced by not being served with a complete copy of Notice A has not, therefore, changed.

39. As for Notice B, again both appellants were served. I note that there is an unnamed party whose interest in the land is listed as an occupier. Again, the requirement to serve this party falls within section 172(2)(a) of the 1990 Act. It may well be the case that this party and the appellant for Appeal C (Ms Wilson) are one and the same. Without evidence confirming this, I can only conclude that this party has been substantially prejudiced by not being served with a complete copy of Notice B.
40. As for the remaining parties, I note that these are listed as adjacent owners or occupiers. Whilst there is no requirement under section 172(2) of the 1990 Act to serve the owners and occupiers of adjoining land, such parties could still be regarded as having an interest that is materially affected by the notice.
41. In this regard, I can see from the evidence that there is a clear relationship between the two parcels of land identified in Notice A and Notice B. Indeed, the relationship is such that the person listed as the adjoining landowner on Notice A (Ms Wilson) made an appeal against that notice, despite being neither an owner nor an occupier of that land. Similarly, an appeal against Notice B was made by the adjoining landowner (Mr Wooldridge), despite being neither an owner nor occupier of the Notice B land.
42. The above leads me to conclude that the other parties served with a copy of Notice B are more likely than not to have an interest in the land that is materially affected by the notice. Indeed, the Council was clearly of the same view, having decided that a copy of the notice should be served on these parties. I note that it did so in consultation with its legal representatives³.
43. Having regard to all of the above, I have no reason to conclude that there was no requirement to serve the parties listed in Notice B as adjacent landowners or occupiers with a copy of that notice, such that it is of no consequence that the copy of the notice they received was missing a number of pages.
44. To summarise, I conclude that copies of both Notice A and Notice B were not served as required by section 172 of the 1990 Act. For this reason, the appeals on ground (e) should succeed.

Conclusions

45. I conclude that parties other than the appellants have been substantially prejudiced by the service of only a partial copy of the enforcement notices and this is not a case when I can exercise the power to disregard that failure to properly serve in accordance with section 176(5) of the 1990 Act. The appeals on ground (e) succeed and the enforcement notices will be quashed.
46. In these circumstances, the appeals on the grounds set out in section 174(2)(a), (f) and (g) to the 1990 Act; any appeal falling within section 174(2)(b) against Notice B that has resulted from the appellants' most recent submissions; and the applications for planning permission deemed to have

³ Paragraph 5.3 of the Council's appeals statement.

been made under section 177(5) of the 1990 Act as amended do not fall to be considered.

Formal Decision – Appeal A and Appeal B

47. It is directed that the enforcement notice is corrected and varied by:

- The deletion in part 3 of the words 'the installation of a hard surface and additional operational development, including the erection of a metal security fences in excess of 2 metres' and their substitution with the words 'the erection of a fence and gates in excess of 2 metres in height in the approximate location identified with two solid lines and labelled "ii) fence" on the plan attached to this notice ("the Plan")';
- The addition in part 3 of the notice of the words 'shown in the approximate location highlighted green on the Plan' after the words 'the erection on the land of a two (2) storey building';
- The deletion from part 5.ii). of the words 'Remove the fence from the area of land as shown on the site location plan' and their substitution with the words 'Remove from the Land the fence and gates'.
- The deletion from Part 5. of requirement iii). in its entirety.

48. Subject to the corrections and variations, the appeals are allowed and the enforcement notice is quashed.

Formal Decision – Appeal C and Appeal D

49. It is directed that the enforcement notice is corrected and varied by:

- The deletion in part 3 of the words 'Without planning permission the material change of use of the land to a mixed use of Commercial General Industrial activities (B2) and Storage of Plant/Machinery (B8), with associated unauthorised engineering operations including the significant alteration of land levels, the alteration and erection of earth bunds in excess of 2metres. Installation of a hard surface to facilitate the unauthorised use of the land and additional operational development without planning permission including the erection of fences in excess of 2metres' and their substitution with the words 'Without planning permission:
 - i) the material change of use of the Land to a mixed use comprising a general industrial use and a use for the storage of heavy goods vehicles, commercial vehicles, commercial plant and machinery ("the Mixed Use");
 - ii) the carrying out of engineering operations comprising the alteration of land levels and the alteration and erection of earth bunds;
 - iii) the installation of a hard surface to facilitate the Mixed Use of the Land; and
 - iv) the erection of Heras-type metal mesh fencing in excess of 2 metres in height.'
- The deletion from Part 5. of requirements i)., ii)., iii)., iv)., and v). in their entirety and their substitution with the words 'i) Cease the use of the Land for the Mixed Use by ceasing the use of the Land for a general industrial

use and ceasing the use of the Land for a use for the storage of heavy goods vehicles, commercial vehicles, commercial plant and machinery’.

50. Subject to the corrections and variations, the appeals are allowed and the enforcement notice is quashed.

J Moss

INSPECTOR