



Appeal Decisions

Site visit made on 10 May 2023

by Richard S Jones BA(Hons), BTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 June 2023

Appeal A Ref: APP/X2220/C/22/3313659

Appeal B Ref: APP/X2220/C/22/3313660

71 Sandwich Road, Ash, Canterbury, Kent CT3 2AH

- Appeal A is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr C Woodger against an enforcement notice issued by Dover District Council.
 - Appeal B is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Ms S Jarret against the same enforcement notice issued by Dover District Council.
 - The notice, numbered ENF/21/00091, was issued on 14 November 2022.
 - The breach of planning control as alleged in the notice is without planning permission the material change of use of the land from a single family dwellinghouse to a mixed use as a single family dwellinghouse and a contractors yard, the storage of plant, machinery and materials and the carrying out of facilitating operational development comprising the laying of hard surface track, construction of a car park, the siting of shipping containers for the storage of tools, plant and equipment for contractors use and the erection of screening.
 - The requirements of the notice are to:
 1. Cease the use of the land as a contractors yard.
 2. Remove from the land all plant, shipping containers (marked as "C" in the approximate position on the attached plan), machinery, equipment, vehicles, trailers, materials, skips, waste, rubble, spoil, sited on the land in connection with the contractors yard use.
 3. Cease the delivery and dispatch of materials, plant, machinery, waste rubble and rubbish in connection with the contractors yard, to and from the land.
 4. Cease the use of the land as a car park for contractors vehicles parking and turning area.
 5. Excavate and break up the hardsurface [sic] car park marked as 'D' shown in the approximate position on the attached plan, removing from the land all resultant materials, rubble and rubbish from the land.
 6. Excavate and demolish the hardsurface [sic] track hatched and marked A shown in the approximate position on the attached plan, removing all resultant materials, rubble and rubbish from the land.
 7. Demount and remove from the land the timber post mounted screening affixed to the existing close boarded boundary fence, erected at 'B' – 'B', shown in the approximate position on the attached plan along with all resultant rubble, rubbish and waste materials.
 - The period for compliance with the requirements is four calendar months.
 - Appeals A and B are proceeding on the grounds set out in section 174(2)(b) and (c) of the Town and Country Planning Act 1990 as amended.
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Decisions

Appeals A and B

1. It is directed that the enforcement notice is corrected by:

- deleting the word 'hardsurface' from requirement 5 of section 5 and substituting with 'hard surface'.
 - deleting the word 'hardsurface' from requirement 6 of section 5 and substituting with 'hard surface'.
2. Subject to the corrections and variation, the appeals are dismissed and the enforcement notice is upheld.

Preliminary Matters

3. Although there are two appellants in this case, their evidence interchangeably refers to them in the singular and plural. I shall therefore do likewise.
4. For the legal grounds of appeal (b) and (c) the onus lies with the appellants to make their case on the balance of probabilities.
5. I note the representation made by the Parish Council on matters relating to traffic movements, privacy, health, structural damage, noise and vibration. I similarly note the appellants' submissions on matters relating to effects on privacy and mental health and the reasons why the mesh fencing was erected.
6. However, I am unable to consider such matters, insofar as they relate to the planning merits of the case, because an appeal has not been made under ground (a), which is that planning permission should be granted for what is alleged in the notice.
7. I also note the Parish Council's submission on the Human Rights Act 1998, but the legal grounds of appeal do not allow for consideration of the effect of my decision on individuals and their rights.

The Enforcement Notice

8. Requirements 5 and 6 refer to 'hardsurface', which should be two words. I am able to correct the notice accordingly under the powers transferred to me by s176(1)(a) of the 1990 Act, without injustice to any party.

Appeals A and B on Ground (b)

9. A ground (b) appeal is that the breach of planning control alleged in the enforcement notice has not occurred as a matter of fact.
10. Planning permission was granted in 1996 for the erection of the detached dwelling at No 71 Sandwich Road. The application site boundary includes the relatively large area of land to the rear of the dwelling and the Council accepts the same to be part of the residential garden.
11. The appellant explains that in March 2021, following a personal falling out with the landlord of the commercial property at No 63 Sandwich Road, which lies adjacent to the rear part of the site, he needed to move all of his belongings and private collection of vehicles onto his garden over one weekend and for a subsequent extended period of time whilst he sorted out the same and removed items from the site.
12. That timeline corresponds with the Council's photographs from 23 March 2021 which show a significant amount of building material being stored on the land to the rear of the dwelling, along with items of plant, a lorry, van, trailers and skips. The two containers marked 'C' on the plan attached to the notice are

- also on site at that time and the provision of the extended hammerhead track appears to have commenced. The photographs dated 22 April 2021 show one of the containers, various items of plant, building materials and the hammerhead track more fully formed with hardcore material.
13. The photograph dated 23 August 2021 again shows various items of plant on the land along with a van, lorry and trailers. The photographs from 21 October 2021 similarly show items of plant, trailers and a lorry. Moreover, in the photographs dated 15 December 2021, there are trailers, items of plant, skips, a lorry and containers on the land.
 14. Therefore, on the balance of probabilities, the residential garden at No 71 was, as alleged, being used for the storage of plant, machinery and materials. I appreciate why the need to sort and store those items came about, nevertheless, that does not mean the activities did not occur.
 15. The appellant argues that prior to the notice being served, he had cleared his garden of most of his personal belongings, retaining only certain vehicles as part of his personal collection and materials which he uses to maintain the goat housing. Even if that were the case, s174(2)(b) of the 1990 Act is worded in the past tense, and the question is whether the breach had occurred by the date of issue of the enforcement notice.
 16. The appellants state that the alleged track allows access to their private tool collection and to store their personal trailers within the rear garden. However, on the face of it, it is unlikely that at least three trailers are needed for personal use. As the appellants own a maintenance and construction business it is more likely that they were also used in connection with the same, as well as the second appellant's business of maintaining a pet cemetery.
 17. The Council state that the appellant confirmed to the investigating officer that his workers meet at the appeal site to load a truck with tools and equipment and drive to site together, returning later in the day to unload. I note that the appellants' explanation that two of his employees do not drive and are picked up on route to site. Nevertheless, his son, who works for the business, does drive to the appeal site. The Council also refer to local residents having reported that the containers are accessed to load and unload tools, materials and equipment in connection with the construction business.
 18. To that end, photographs are provided over a number of occasions where a truck is being loaded in the front garden of No 71 with tools and ladders. Others are provided showing tools and timber, and corrugated panels being loaded, similar to those shown stored in the rear garden. Pictures are also provided of plant, a flat bed truck and a trailer parked in front of the house and of deliveries to the site. A picture taken in the dark shows a van and what appears to be a full trailer leaving the site. Although undated, the photographs are evidently taken some time after June 2019 as the front garden area is devoid of grass.
 19. The appellants explain that one of the delivery pictures is an Ebay purchase and that materials delivered are for personal use. The appellants also explain that the photograph where only the front part of a lorry can be seen, was on site for a skip collection.

20. A schedule of activity is provided from an unnamed source detailing observations between March 2021 up to and beyond the date of the enforcement notice. Although unverified, there are clear correlations between those observations and the photographs provided.
21. I accept that the appellants and son leaving the property in their respective vans is no different to that of any other trade person, but the photographic evidence demonstrate use and activity above and beyond that.
22. Moreover, no evidence is provided to show that the plant and machinery on the site were or had been used for the purposes of maintaining their home or large garden and high boundary hedging. The appellants state that machinery occasionally leaves the garden for repair and maintenance and is returned following repair. However, no evidence is provided, such as servicing or repair invoices, which would corroborate the same and also demonstrate that they were not being taken off site for business related purposes.
23. The appellants explain that they keep pet goats within a range of garden buildings they constructed on the land to the rear of the dwelling. It is stated that they regularly maintain the goat housing, as they are particularly destructive animals, keeping a variety of timber and roofing materials within the garden for repairs. They assert that the materials are not associated with their construction business.
24. That may well partly be the case as the goat related buildings appear to utilise the corrugated sheeting shown in the Council's photographs. However, there appears to be a wider range of materials than that which are likely to be used for the stated purpose, including steel beams, cladding/insulation panels and other types of sheeting. The appellant does not explain what those materials were used for but asserts that he did not store materials in association with his construction business at his home address. Rather, materials were and are delivered directly to the site where works are being carried out.
25. For convenience that is the most likely scenario in most instances. Nevertheless, the photographs show some of the materials stored in the rear garden, including the corrugated sheeting that may be used for the goat related buildings, being loaded onto a truck in the front garden.
26. The appellants state that the activity should not have come as a surprise to the Council as it had requested the site be cleared of their belongings. However, if those materials were being taken elsewhere, other than to site for a particular job, for example to a different yard or storage facility, it is not explained where that was. In the absence of such an explanation, it is more likely that the materials which were being stored on site were being taken to a particular site for work in association with the construction and maintenance business.
27. I note that the appellant states that it is his hobby to collect tools and machinery. Be that as it may, it is very likely, given the foregoing, that they are also used in connection with the construction business.
28. The appellants have provided photographs purporting to show the items stored within and on the exterior wall of the storage unit he rented at No 63. Many of the items which can be seen could be used for personal purposes, but there are many items that could be used in connection with their business, including materials, tools and a forklift truck. Moreover, the critical issue is what had

been moved onto the appeal site prior to issuing the enforcement notice. In that regard there is little to show that they were the same items and it is likely that there were many more items than that shown in the appellants' photographs. Indeed, the completed Planning Contravention Notice (PCN) refers to a previously rented yard and buildings (plural).

29. The Council state that the landlord of the adjoining site confirmed the unit was rented for various activities by the landowner at No 71, including storage and vehicle repairs - which accords with the appellants' submission - but that he also ran the physical side of his construction business from the rented units and land, and that plant, machinery and related materials and paraphernalia were kept accordingly. He confirmed to the Council that the business at No 71 was being operated in the same manner.
30. I have not been provided with that representation, thereby limiting its weight. The appellants also suggest it to be malicious as a result of the falling out. Nevertheless, the appellants have not identified a different site where the business did operate from, if it was not No 63. The registered office of the company is at the appeal site. Whilst that is not in any way determinative, based on the totality of the evidence, it is likely that following eviction from the adjacent premises, the appeal site was used for the appellants' maintenance and construction business.
31. I therefore find, on the balance of probabilities, that a change of use of the land to a mixed use of single family dwellinghouse and contractors yard occurred by the date of the enforcement notice.
32. Turning to the facilitating development, the above referenced photographs show that the siting of the two shipping containers occurred prior to issuing the enforcement notice. At the time of my site visit, which was obviously after the issuing of the enforcement notice, the amount of tools and equipment within the containers was far beyond that which would be expected to be kept for personal use, even within a property with such a large garden; it was more akin to that associated with a construction and maintenance company.
33. Again, I appreciate the appellant states that collecting tools is a hobby and that the telehandler for example was not purchased to use but is part of a collection. However, based on the above, it is more likely than not that the containers were used for the storage of tools, plant and equipment for contractor use as well as personal use.
34. The timeline of the Council's photographs of the hard surface track largely corresponds with the appellants' response to the PCN, that it was partially completed by March/April 2021. It is therefore undisputed that the creation of a track had occurred prior to issuing the enforcement notice. The point of contention is whether it facilitated the alleged use or to provide access to their personal tool collection and the use of the land for the keeping of goats and other doing things one would expect to do within a large garden, as stated in the PCN. The appellants explain that the area gets wet and muddy during the winter months and the track enables them to properly care for the goats.
35. Notwithstanding that the main part of the track runs beyond the area where goats are kept, the track provides access to the containers, which are likely to be primarily used for the contractor business, as well as personal use, thereby facilitating a mixed use of the land. Indeed, the timing of its provision

corresponded with having to move the appellants' belongings from the adjacent site onto the appeal site. In that regard, the track also provides direct access to the gates in the side boundary to No 63, which the appellant explains he installed to move his belongings, as well as to allow skips to be delivered and collected. Therefore, even if the track also facilitates activities that are normally found to occur in a residential garden, that tallies with the mixed use allegation.

36. The appeal site dwelling is set back from the road with a gap between its western side and western boundary allowing access to the rear detached garage and the land beyond. Aerial photographs show that a connecting track or similar has been in place since at least 2003 and the requirements of the notice do not seek to address that aspect. Nevertheless, as the only access onto the land is via the front access from Sandwich Road, the track would have facilitated movement between the front and rear of the site.
37. The Google Streetview image from June 2019 shows that the land in front of the dwelling comprised an area of lawn with a driveway along the western boundary leading to a parking/turning area. At that time, two vans were parked in front of the house and another commercial type vehicle was parked alongside the western boundary.
38. The Council's photographs from 23 March 2021 show that the lawn had been removed and the whole of the area in front of the dwelling being surfaced in hardcore type material. The photograph from 28 April 2022 shows the surfacing in a more complete state, most of the front boundary fencing removed and the access repositioned between posts that appear to be aligned to create visibility splays. Two vans, an item of plant and a car can be seen parked in front of the house. In the picture from 4 July 2022, one car and a van can be seen parked in front of the house, along with stored roofing material.
39. Based on the above, the area in front of the dwelling was used for parking in association with the use of the dwelling, including the parking of the second appellant's van and trailer used in connection with her business of maintaining a pet cemetery.
40. However, it is not shown that the whole of the front garden is required for parking incidental to the enjoyment of the dwellinghouse. Moreover, the creation of the additional hard surfacing in front of the dwelling coincided with the commencement of the mixed use of the land.
41. Moreover, the above described photographic evidence also show that it was used for parking and loading/unloading of vehicles associated with the appellants' construction and maintenance company, thereby tallying with the mixed use allegation, rather than solely for purposes incidental to the enjoyment of the dwellinghouse.
42. The photographs from 23 March 2021 show high green mesh fencing along part of the western side boundary. The same fencing can also be seen sited further back behind the rear building line of No 69 Sandwich Road in the photograph dated 28 April 2022. An undated photograph from the neighbouring property shows it either partly demounted or partly erected.

43. In any case, the appellant acknowledges that he erected a timber and green net mesh extension to the existing boundary fence, albeit as a temporary measure. For the purposes of the ground (b) appeal, such matters evidently occurred as a matter of fact. That the screening is no longer in place makes no difference because the question is whether the breach had occurred by the date of issue of the enforcement notice.
44. The appellants explain that the mesh fencing was erected to prevent their neighbour from taking pictures of their rear garden. That could be for residential privacy reasons and/or to screen activities taking place on the land. On the balance of probabilities, I am satisfied its erection facilitated the alleged mixed use.
45. I therefore conclude, on the balance of probabilities, that at the time the enforcement notice was issued, the alleged development had occurred. I note the Parish Council's reference to construction work over a five year period, however the evidence before me points to the breach commencing around March 2021. The ground (b) appeals fail.

Appeals A and B on Ground (c)

46. A ground (c) appeal is that the matters alleged in the notice do not constitute a breach of planning control.
47. The appellants assert that the whole garden area meets the tests for 'curtilage' and forms the curtilage to the dwellinghouse. However, for the avoidance of doubt, the term 'curtilage' simply describes an area of land that has an intimate association with a building; it does not describe what the use of the land might be. Moreover, curtilage should not be confused with the planning unit. The two sometimes cover the same area of land, but that will not always be the case and does not in any event mean that they are the same thing. Nevertheless, it does not appear to be a matter of dispute that the land within the red line boundary previously formed a single planning unit used for residential purposes in association with the dwelling at No 71. The same area of land is subject to the enforcement notice.
48. For a material change of use to have occurred, there must be some significant difference in the character of the activities from what has gone on previously as a matter of fact and degree. The concept of a mixed use is one of two or more primary (or main) uses existing within the same planning unit. One is not incidental to the other, although there may be incidental uses associated with each primary use.
49. The works to the land at the front of the site have materially changed the setting of the dwelling from one that was characteristically domestic to one that is functional. The evidence also shows that the mixed use generates differing activities, such as the loading of vans and trucks with materials, tools and equipment and a significantly greater amount and a differing type of parking and vehicular movements in and out of the site, above that of a residential use, even if the appellants and son have their own vans. It is a use more akin to a commercial premises rather than a residential property.
50. The siting of containers and the storage of plant, machinery and materials in the rear garden area, along with the track to facilitate access and movement, clearly and materially changes the character and appearance of the site and

how it is used, perceived and experienced. Although there are three vehicles or structures in the rear garden in the 2003 aerial photograph, the photographs provided from 2021 and 2022 clearly show a significant change in the character of the activities carried out.

51. Therefore, as a matter of fact and degree, the change of use of the land from single family dwellinghouse use (with associated garden) to a mixed use of single family dwellinghouse, contractor's yard and the storage of plant, machinery and materials, is material and as such amounts to development requiring planning permission. The appellant further accepts that the erection of screening required planning permission.
52. Article 3 and Schedule 2, Part 1, Class F of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the GPDO) allows for '*the provision within the curtilage of the dwellinghouse of a hard surface for any purpose incidental to the enjoyment of the dwellinghouse*'. However, I have found under ground (b) it more likely that the track is used for mixed use purposes. Therefore, even if I found that the land on which the track has been created has an intimate association with the main dwelling such that it falls within its curtilage, it does not benefit from planning permission granted by the GPDO. The same conclusions apply to the additional area of hard surfacing created in front of the dwelling.
53. The same reasoning also applies to Class E¹ permitted development rights for the provision within the curtilage of a dwellinghouse of any building required for a purpose incidental to the enjoyment of the dwellinghouse, insofar as those permitted development rights might apply to the siting of the containers (which is usually regarded as operational development).
54. I appreciate that the Council's enforcement officer confirmed his opinion that the two containers and track were permitted development as they were within the curtilage of the dwellinghouse and were being used incidentally. However, the subsequent chain of emails reflect an evolving picture leading to those matters being part of the enforcement notice.
55. In any event, the notice is directed at a material change of use and clearly refers to the track, car park and containers as facilitating operational development. In the case of *Murfitt*² it was held that that where an enforcement notice is issued in respect of a material change of use, and works were carried out to facilitate the same, the notice may require that the 'ancillary' works are removed in order that the site is restored to its previous condition and the breach remedied. It follows from *Murfitt* that an enforcement notice so concerned may require the removal of facilitating works, even if those works otherwise would have been immune from enforcement action or are permitted development.
56. It was further held in *Somak Travel*³ that an enforcement notice could require the removal of works which did not amount to development at all but had facilitated an unauthorised material change of use. Consequently, even if I had found to the contrary on permitted development rights, the notice can require the removal of the facilitating containers, track and car parking.

¹ Of Part 1 of Schedule 2 of the GPDO

² *Murfitt v SSE & East Cambridgeshire DC* [1980] JPL 598

³ *Somak Travel v SSE & Brent LBC* [1987] JPL 630

57. I note that the approved site plan for the dwelling at No 71 shows a driveway, three parking spaces and a turning area at the front of the property. The Google Streetview images from 2019 show the pre-existing layout in front of the dwelling being broadly in line with that approved. However, the same area, in conjunction with the additional area of hard surfacing subsequently facilitated the change of use of the land for mixed use purposes. The principles of *Murfitt* and *Somak Travel* therefore apply.

58. I therefore find, on the balance of probabilities, that the use of the land for mixed use purposes, as described in the corrected allegation, constitutes a breach of planning control. The appeals on ground (c) fail.

Conclusion

59. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice with corrections.

Richard S Jones

INSPECTOR

Appendix 1

List of those who have appealed

Reference	Case Reference	Appellant
Appeal A	APP/X2220/C/22/3313659	Mr C Woodger
Appeal B	APP/X2220/C/22/3313660	Ms S Jarret