



Appeal Decisions

Site visit made on 10 July 2023

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 July 2023

Appeal A: APP/M1710/C/22/3307496

Appeal B: APP/M1710/C/22/3307497

Appeal C: APP/M1710/C/22/3307498

Land adjacent to Oak Tree Farm, Gibbs Lane, Shortheath Common, Bordon GU35 9JS

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mrs Kelly Stevens (Appeal A), Mr Jessie Stevens (Appeal B) and Ms Jayne Stevens (Appeal C) against an enforcement notice issued by East Hampshire District Council.
 - The enforcement notice was issued on 22 September 2022.
 - The breach of planning control as alleged in the notice is: Without planning permission and within the last 10 years, the material change of use of land to a sui generis use comprising of the storage of motor vehicles.
 - The requirements of the notice are: 1. Cease the use of the land hatched black on the plan attached to the notice as a motor vehicle storage place. 2. To permanently remove all motor vehicles from the land hatched black on the plan attached to the notice.
 - The period for compliance with the requirements is: 2 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(d) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
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Summary of Decisions

1. The appeals are dismissed and the enforcement notice is upheld with a correction.

Application for Costs

2. An application for costs was made by Mrs Kelly Stevens, Mr Jessie Stevens and Ms Jayne Stevens against East Hampshire District Council. This application is the subject of a separate Decision.

Preliminary Matter

3. The appellants have raised that the storage of motor vehicles is not a sui generis use, but a use class B8 storage and distribution use. This amounts to a hidden ground (b) appeal. They then assert the property benefits from a lawful B8 storage and distribution use, which amounts to a hidden ground (c) appeal. The Council have provided response and therefore injustice does not arise from consideration of ground (b) and (c) appeals.

The ground (b) appeals

4. For a ground (b) appeal to succeed the onus is on the appellants to demonstrate, on the balance of probabilities, that the alleged breach of planning control, namely a sui generis use, has not occurred as a matter of fact.
5. The Council has enforced against the storage of motor vehicles, as opposed the parking of vehicles. It is then not a use taking place within a residential planning unit. The storage of motor vehicles is also not an activity merely confined to new vehicles, it is equally applicable to used vehicles. Accordingly, as a matter of fact and degree the storage of motor vehicles taking place on site, and which I observed during my site visit was its principal use, is not unique or in a class of its own, and so is not a sui generis use.
6. To then make reference to a B8 usage, and its consequent cessation thereafter, could make the notice more onerous. However, injustice would not arise from correcting the allegation in order to omit the reference to a sui generis use. This would then neatly dovetail with the existing requirements of the notice.
7. The appeals on ground (b) therefore succeed to this limited extent.

The ground (c) appeals

8. For an appeal to succeed on ground (c) the onus is on the appellants to demonstrate, on the balance of probabilities, that there has not been a breach of planning control. This could be because the matters alleged do not constitute development, planning permission has already been granted for the matters alleged in the enforcement notice or they are permitted development.
9. The appellants make reference to some planning history. They however provide very little evidence of the history itself, only a commentary surrounding it. It is vague and ambiguous as a consequence. The Council also makes reference to planning history, but the full details are not before me. In any event, the onus remains on the appellants, and there is very limited evidence to demonstrate on the balance of probabilities that either a planning permission or certificate of lawfulness exists on the appeal site for the use enforced against, as corrected, or indeed otherwise.
10. It is also asserted that following the refusal of a certificate of lawfulness in 2013, which related to a mixed use, the planning unit would revert to the last legal planning permission or lawful planning position. However, there is no basis in law that has been brought to my attention to support this assertion. Reference is also made to enforcement action in 1999, but the relevance of this to these appeal proceedings is vague and ambiguous. Such matters therefore do not demonstrate on the balance of probabilities that there has not been a breach of planning control.
11. There is then very little evidence before me to demonstrate that the storage of motor vehicles does not constitute development for the purposes of Section 55 of the Act or is otherwise a form of permitted development.
12. The appeals on ground (c) consequently fail.

The ground (d) appeals

13. This ground of appeal is that at the date when the notice was issued, it was too late to take enforcement action against the matters stated in the notice. The burden of proof in an appeal on this ground firmly lies with the appellants. As such, the appellants need to demonstrate, on the balance of probabilities, that the use began 10 years before the notice was issued. In addition, that the use continued such that at any time during a continuous ten-year period the Council could have taken enforcement action against the use.
14. The appellants contend that the Council has received extensive communications in relation to a B8 storage use. However, there is very little evidence of these communications or other documentary evidence in support of this contention before me. Reference is also made to the existence of statutory declarations, but again these are not before me and so I afford such matters very limited weight. Whilst it appears the appellants also consider the Council may have previously accepted some form of commercial use, as a matter of fact and degree this does not demonstrate on the balance of probabilities that the use enforced against is immune from enforcement action.
15. A Breach of Condition Notice was issued by the Council in 2017, relating to outside storage. The planning permission from which this emanates, or even a plan relating to the land affected, are not before me. In any event, the appellants appear to dispute the enforceability of the condition enforced against, and/or contend that the appeal site acquired immunity long before the condition was imposed. However, these assertions do not demonstrate on the balance of probabilities that the use now enforced against is immune from enforcement action.
16. The appellants consider that a lawful use of B8 storage was crystallised many years ago. A response to a Planning Contravention Notice in 2022 also indicates the same. Despite this, there is very little documentary or sworn evidence before me to demonstrate on the balance of probabilities that the use now enforced against is immune from enforcement action. Reference is also made to a map from 1962, but this is not before me, and its relevance for the purposes of demonstrating that it is too late to take enforcement action is vague and ambiguous.
17. The appellants then suggest that the Council should disclose any specific evidence it holds. However, the onus to provide evidence remains firmly on the appellants, and they have had the opportunity for the purposes of these appeal proceedings to obtain and bring forward any evidence that they feel is relevant.
18. As a matter of fact and degree, based upon the evidence before me, the appellants have not discharged the necessary burden of proof to demonstrate on the balance of probabilities a continuous 10-year period of use such that enforcement action could otherwise not have been taken.
19. The appeals on ground (d) consequently fail.

Overall Conclusion

20. For the reasons given above I conclude that the appeals should not succeed. I shall uphold the enforcement notice with a correction.

Formal Decisions

Appeals A, B and C

21. It is directed that the enforcement notice be corrected by:

- deletion of the words '*to a Sui Generis use*' from the allegation in section 3. of the notice.

22. Subject to this correction the appeals are dismissed and the enforcement notice is upheld.

Paul T Hocking

INSPECTOR