



Appeal Decision

Hearing Held on 13 December 2023

Site visit made on 13 December 2023

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH JP

an Inspector appointed by the Secretary of State

Decision date: 25th January 2024

Appeal Ref: APP/A2280/C/22/3306983

Land at Port Werburgh, to the south of Vicarage Lane, Hoo, Rochester, Kent shown edged red on the plan attached to the notice

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr D Swann (Residential Marine Ltd) against an enforcement notice issued by The Medway Council.
 - The enforcement notice was issued on 22 August 2022.
 - The breach of planning control as alleged in the notice is:
Without the benefit of planning permission, the material change of use of the Land from storage to residential use including the stationing of mobile homes with associated works on the Land to form an extension of the adjacent residential mobile home park.
 - The requirements of the notice are to:
 - (i) Cease the use of the Land for residential purposes (within 6 months).
 - (ii) Remove all mobile homes and caravans from the Land (within 7 months).
 - (iii) Remove all areas of hardstanding from the Land including concrete bases, block paving areas, hardcore sub-bases and tarmac (within 7 months).
 - (iv) Remove all services connected to and supplying the mobile homes including gas, water, electricity, and all associated equipment including septic tanks and meter boxes (within 7 months).
 - (v) Demolish the brick undershirts and steps from the mobile home bases (within 7 months).
 - (vi) Remove the created roadway and associated kerb edging stones and bollards (within 7 months).
 - (vii) Remove all landscaping and turfing from the Land (within 7 months).
 - (viii) Remove all resultant debris and associated materials arising from compliance with requirements (iii), (iv) and (v) from the Land (within 8 months).
 - (ix) Restore the Land to its condition prior to the commencement of the unauthorised material change of use (within 8 months).
 - The appeal is proceeding on the grounds set out in section 174(2) (a) (c) (g) of the Town and Country Planning Act 1990 as amended. Since an appeal on ground (a) has been made, the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be considered.
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Decision

1. The appeal is allowed and the enforcement notice is quashed.

Ground (c)

2. For an appeal to succeed on this ground, it is for the appellant to demonstrate on the balance of probabilities that the matters stated in the notice do not constitute a breach of planning control. It is the appellant's case that such a breach has not occurred because there has been no material change of use of the land (and, therefore, no development requiring planning permission).

3. The planning unit is a concept which has evolved as a means of determining the most appropriate physical area against which to assess the materiality of change. In the case of *Burdle*¹ it was suggested, as a useful working rule, that it should be assumed that the unit of occupation is the appropriate planning unit - unless and until some smaller unit can be recognised as the site of activities which amount in substance to a separate use both physically and functionally. Further, that the determination of the appropriate planning unit is a matter of fact and degree². I have accordingly considered the specific facts of this case very carefully in determining the planning unit.
4. The broadly rectangular parcel of land comprising the appeal site is located immediately to one side of the main access road, behind the security gates, of the Port Werburgh marina and residential caravan park which, together with the appeal site, lay within the same occupation of the appellant and his company ('the wider site' – the unit of occupation³). On its western side the appeal site is contiguous with the access road of the wider site and is open along its length. I do not accept the Council's view that the access road constitutes physical separation – on the contrary, it provides connection between the appeal site and the rest of the unit of occupation.
5. I also do not agree with the Council's position that the wider site comprises a number of different planning units – I am clear from all the evidence (including the photograph in page 6 of the appellant's statement) that it is single planning unit formed from a single unit of occupation, without internal physical separation, with mixed uses relating to the composite use of the land as a marina and caravan park. The mixed primary uses with associated ancillary uses (such as the storage use described below) overlap and share facilities throughout the wider site (car parking; amenity, security and office blocks).
6. I accept what I have read, and heard directly from the appellant at the hearing, that since his purchase of the land in 2012 the appeal site has been in use with functional connection to the wider site for the parking of vehicles and the siting of storage containers⁴. The containers were predominantly used for the storage of personal possessions of residents (of either caravans or marina houseboats) after they had moved home to Port Werburgh (with the inevitable 'downsizing' that might involve). Six mobile homes have now been stationed on the appeal site (within the context of the substantial provision of homes on the wider site) and the parking and aforementioned storage has continued on the wider site with storage containers performing the same function a short unrestricted distance across the access road to the west. This gives weight to a finding, which I am making, that the appeal site forms just one small part of a much larger unit of occupation forming a planning unit and that the stationing of mobile homes on the former does not result in a material change of use of the latter since there is no significant difference in the character of the activities of the composite use from what has gone on before.

¹ *Burdle v SSE* [1972] 3 All ER 240

² It was acknowledged by the Council at the hearing that areas covered by past planning permissions are not necessarily determinative of the planning unit and that, in line with *Burdle*, such a determination is a matter of fact and degree for the decision-maker. Notwithstanding that the appeal site has no planning history, as stated at the hearing by the Council, I have applied the *Burdle* principles in arriving at my finding upon the planning unit.

³ The appeal site being identified by way of a blue line on planning applications (MC/15/2334; MC/13/3340) as within the same ownership of the appellant, and noting that the committee report relating to MC/20/2884 confirmed that the site "forms part of the marina area."

⁴ While the appellant also described the storage of buses and coaches on the appeal site upon his purchase, unconnected to the use of the wider site, this residual use (which he says he brought to an end) does not mean that the site was not used for the uses (physically and functionally connected to the wider site) he also described.

7. For the above reasons, on the balance of probability, I am satisfied that the matters stated in the notice do not constitute a breach of planning control.

Conclusion

8. For the reasons given above I conclude that the appeal should succeed on ground (c). Accordingly, the enforcement notice will be quashed. In these circumstances the appeal under the various grounds set out in section 174(2) to the 1990 Act as amended and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended do not need to be considered.

Andrew Walker

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Guy Williams KC (Counsel)
Paul Nicholls (Graham Simpkin Planning)
Dennis Swann (Appellant)
Matthew Lawrence (MRL Acoustics)

FOR THE LOCAL PLANNING AUTHORITY (LPA):

Olivia Davies (Counsel)
Amanda Barnes (Senior Planner)

INTERESTED PERSONS:

Jim Holloway (Appeal site Resident)

DOCUMENTS submitted at the hearing:

- 1 48-hour Noise Impact Assessment (MRL Acoustics; February 2023 Report No.MRL/100/1957.1v1)
- 2 *Burdle v SSE* [1972] 3 All ER 240
- 3 *Hertfordshire CC v SSCLG* [2012] EWCA Civ 1473
- 4 Extract of from Encyclopedia of Planning Law and Practice – P55.45 (Westlaw)
- 5 Employment Land Need Assessment – Update (Avison Young; October 2020)
- 6 Suggested planning conditions – appellant and LPA.