



Appeal Decisions

Site visit made on 21 January 2025

by Stephen Hawkins MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 February 2025

Appeal A Ref: APP/D1780/C/23/3330390

Appeal B Ref: APP/D1780/C/23/3330391

105 Pinegrove Road, Southampton, Hampshire, SO19 2PP

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeals are made by Mr Pavel Pavlov (Appeal A) and Mrs Elena Pavlova (Appeal B) against an enforcement notice issued by Southampton City Council.
 - The notice was issued on 6 September 2023.
 - The breach of planning control as alleged in the notice is the material change of use of the land to a mixed use for residential purposes and for the dealing, storing and/or processing of scrap metal.
 - The requirements of the notice are: (i) Cease the use of the land for the dealing, storing and/or processing of scrap metal; and (ii) Remove those items from the land that are associated with the use of the land for the dealing, storing and/or processing of scrap metal.
 - The period for compliance with the requirements is 56 days.
 - The appeals are proceeding on the grounds set out in section 174(2)(c), (e) and (g) of the Town and Country Planning Act 1990 (as amended). Since the prescribed fees have not been paid within the specified period, the appeals on ground (a) and the applications for planning permission deemed to have been made under section 177(5) of the Act have lapsed.
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Decisions

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

Ground (e) appeals

2. The ground of appeal is that copies of the enforcement notice were not served on the owner and the occupier of the land to which it relates and on any other person having an interest materially affected by it, as required by s172(2) of the 1990 Act. The burden is firmly on the appellants to show why their appeals should succeed on this ground, the relevant test of the evidence being on the balance of probability.
3. The appeals made on this ground are misdirected. It is not in dispute that the Council served copies of the notice by leaving them at the appeal property-the appellants' usual or last known place of abode. In doing so, the method of service follows that prescribed in s329(1) of the 1990 Act. Additionally, the appellants did not provide details of any other person with an interest in the land to which the notice relates. Whether discussions took place between the Council and the appellants prior to the issuing of the notice has no bearing on the ground of appeal. Therefore, the appellants have been unable to show that copies of the notice were not served as required.

4. In any event, s176(5) of the 1990 Act provides for disregarding a failure of service of copies of an enforcement notice where persons do not suffer substantial prejudice as a result. The appellants have not been prejudiced by any purported failure of service. They have had the opportunity to make full arguments during the course of these proceedings as to why their appeals should be allowed. There is little firm evidence to suggest that any other persons would have made additional arguments in favour of allowing the appeals or would have appealed on grounds other than those advanced, had they been afforded the opportunity to do so. As a result, even if there were to have been a failure by the Council in terms of serving copies of the notice, I would have concluded that it should be disregarded in this case.
5. The ground (e) appeals fail.

Ground (c) appeals

6. The ground of appeal is that the matters alleged in the notice do not constitute a breach of planning control. In appealing on this ground, the burden is on the appellants to satisfy the same standard of proof as set out in the previous ground of appeal.
7. The property contains a two-storey semi-detached dwelling, stood in generously sized grounds which partly wrap around a neighbouring property. There are freestanding outbuildings in the grounds. The notice alleges the material change of use of the property to a mixed use including the dealing, storing and/or processing of scrap metal.
8. The definition of development set out in s55(1) of the 1990 Act includes the making of any material change of use of any buildings or other land. Planning permission is required for the carrying out of any development of land, having regard to s57(1) of the 1990 Act.
9. Notwithstanding being aware of the date and time of my visit the appellants were not on hand to facilitate access to the property. Even so, from publicly accessible areas I could observe that there is a substantial accumulation of manufactured metal items occupying extensive parts of the grounds at the side and rear of the dwelling. These items included household appliances, sheeting, panels, pipes, tubing, racking, frames and containers. The items were stacked up to a height approaching around 1.8 metres above the ground level in places. Relatively limited quantities of other items, including assorted timber, glass, plastic and sheeting, were also evident in the grounds.
10. At s55(2)(d), the 1990 Act provides that the use of any buildings or other land within the curtilage of a dwelling for any purpose incidental to the enjoyment of the dwelling as such shall not be taken to involve development. The appellants might well regard their activity at the property involving scrap metal as a personal pursuit. However, that is not enough to show that it is a purpose incidental to the enjoyment of the dwelling as such. Activities at a dwelling by occupiers which involve a part-time business or which are purely an extended hobby are still capable of amounting to a material change of use.
11. The presence at the property of these substantial quantities of metal items goes above and beyond what might reasonably be regarded as incidental to the enjoyment by occupiers of the dwelling as such. The amount of metal items at the property exceeds by a considerable margin what might normally be

expected from householders undertaking activity of a scale and nature incidental to their reasonable enjoyment of the dwelling and its curtilage.

12. Furthermore, having regard to the suburban and predominantly residential setting, the appellants' activity has led to the property having a markedly more 'industrialised' appearance, entirely at odds with its surroundings. It is also likely to have had impacts on the residential amenities of neighbours, including through an increase in noise and disturbance associated with movement of the metal items. This all points towards the appellant's activity as not being incidental to the primary use as a dwelling but amounting to a primary use in its own right.
13. Accordingly, as a matter of fact and degree the scale and magnitude of the appellants' activity has involved a material change in the character of the use of the property to a mixed use which includes the dealing, storing and processing of scrap metal, falling within the definition of development in s55(1) of the 1990 Act. No planning permission for the material change of use was drawn to my attention. The definition of a breach of planning control in s171A(1) of the 1990 Act includes carrying out development without the required planning permission.
14. Since the appellants have been unable to show that the matters alleged in the notice do not constitute a breach of planning control, the ground (c) appeals also fail.

Ground (g) appeals

15. The ground of appeal is that the time allowed for complying with the notice requirements falls short of what is reasonable.
16. The appellants did not specify what time they might need to comply with the notice. In any event, the 56-day period specified in the notice affords the appellants sufficient time for ceasing the scrap metal related activity and removing the associated items from the property. Removing those items, including lifting and loading them into a car or light van, would not be a particularly difficult or onerous task and could probably be carried out by two or more people working together with relative ease.
17. It would be a reasonably straightforward matter to transport the metal items to a licenced public or private recycling facility in a car or light van. I am given to understand that there are a number of public facilities within a convenient driving distance of the property. Whilst the appellants might have weekday work commitments, my understanding is that the local public recycling facilities are generally open at weekends. Given the number of weekends available between the notice taking effect and the end of the compliance period, the appellants should have ample opportunity to remove the metal items from the property.
18. Alternatively, it is open to the appellants to engage a suitably licenced firm to remove the metal items. There are likely to be a significant number of firms with the necessary skills and expertise, who would be available at relatively short notice to undertake the required remedial works. Such firms would be unlikely to take much more than a week to remove the items. Whilst this option might involve the appellants incurring considerable expense, there is

little to suggest that the associated costs would be unduly onerous having regard to the timescale involved.

19. Therefore, the period specified in the notice is not too short and is reasonable. It follows that extending the period for compliance would do little more than perpetuate the breach. The ground (g) appeals also fail.

Conclusions

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

Stephen Hawkins

INSPECTOR