The Planning Inspectorate

Appeal Decisions

Inquiry Held on 2 February 2021, 24 and 25 February 2022
Site visit made on 23 February 2022

by K R Saward Solicitor

an Inspector appointed by the Secretary of State

Decision date: 14 March 2022

Land Adjoining 76-78 High Street, Dymchurch, Kent

Appeal A: APP/L2250/C/19/3221881
Appeal B: APP/L2250/C/19/3221765
Appeal C: APP/L2250/C/19/3222221
Appeal D: APP/L2250/C/19/3221711

- 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 against an enforcement notice issued by Folkestone & Hythe District Council.
- Appeal A is made by Mr Graham Checksfield.
- Appeal B is made by Mr Terence Peters.
- Appeal C is made by Andrew David Checksfield.
- Appeal D is made by John Puttock.
- The enforcement notice was issued on 21 December 2018.
- The breach of planning control as alleged in the notice is without planning permission the material change of use of the land shown outlined in red on the plan attached to the notice to use for car sales, storage of cars, storage of touring caravans and trailers.
- The requirements of the notice are:
  1) Permanently cease the use of the land shown outlined in red on the plan attached to the notice for car sales, storage of cars, storage of touring caravans and trailers.
  2) Permanently remove all vehicles, caravans and trailers from the land.
  3) Excavate to a depth of 30cm all hard standing within the approximate area hatched red on the plan attached to the notice.
  4) Permanently remove the excavated hard standing material from the land.
  5) Replace the excavated hardstanding material with topsoil.
  6) Leave the topsoil so that is [sic] at the same height as the land level immediately adjacent to the site boundaries.
  7) Reseed the levelled land with grass seed.
- The period for compliance with all the requirements is 6 months
- Appeal A is proceeding on the grounds set out in section 174(2)(b),(c)&(f) of the Town and Country Planning Act 1990 as amended.
- Appeal B is proceeding on the grounds set out in section 174(2)(b),(c),(d)&(f) of the Town and Country Planning Act 1990 as amended.
- Appeal C is proceeding on the grounds set out in section 174(2),(c),(d)&(f) of the Town and Country Planning Act 1990 as amended.
- Appeal D is proceeding on the grounds set out in section 174(2)(d) of the Town and Country Planning Act 1990 as amended.

Decisions

Appeals A,B and C

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

- deleting the words "from authorised signature" in paragraph 7.
- in step 2) of paragraph 5, deleting the word "vehicles" and substituting "cars" and inserting the word "touring" before "caravans".
- substituting the plan attached to the enforcement notice with the plan annexed to these decisions.

And varied by:

- deleting the requirements in steps 3), 5), 6) and 7) of paragraph 5. and inserting a new step 3) to read: "Remove the hard standing laid to facilitate the material change of use and restore the land to its previous condition before the breach took place as a grass area".

2. Subject to those corrections and variations, the appeals are dismissed and the enforcement notice is upheld.

Appeal D

3. Upon substitution of the enforcement notice plan, Appellant D no longer has an interest in the land enforced against and his appeal falls away.

Preliminary Matters

4. All four appeals are brought against the same enforcement notice.

5. Due to restrictions arising from the coronavirus global pandemic, the Inquiry was opened on 2 February 2021 as a virtual event. With the agreement of all parties, it became necessary to adjourn the Inquiry during my opening announcements due to poor quality audio and visuals for some participants. The Inquiry was set to resume as a face-to-face event on 9 November 2021. At the Council's request and with the agreement of the appellants, the adjournment was extended as a result of exceptional circumstances arising from a Council witness with first-hand knowledge of the site being unable to attend.

6. At the Inquiry, Appellant A represented himself plus Appellant's C and D having also made written submissions on their behalf. Appellant B instructed his own agent who appeared at the Inquiry to participate in discussion on the validity of the enforcement notice and to make submissions in this regard. No oral witness evidence was tendered on behalf Appellant B although his agent took the opportunity to cross-examine Ms Patching, the Council's witness. I have disregarded new points raised for the first time by Appellant B's agent during closing submissions and alerted him to this at the time.

7. In arriving at my decisions, I have taken into account all written submissions submitted in the course of these appeals insofar as relevant to the grounds of appeal and matters pertaining to the notice.

8. A few days before the Inquiry resumed on 24 February 2022, the Council submitted a supplementary proof of evidence. This was stated to be in response to my Inquiry note of 2 November 2021 in which I had queried whether there was agreement over the planning unit. Whilst insisting that the alleged activities were taking place within a single planning unit, the Council accepted that the area outlined on the enforcement notice plan is "wider than intended". The plan corresponds with the area outlined by Appellant B when seeking

planning permission for use of the land for vehicles sales in 2017. However, it includes a roughly triangular shaped area falling within the lease held by Appellant D. The Council produced a revised plan excluding this area.

9. The new plan omitted the red hatching shown on the original plan intended to denote an area of hardstanding. There is a requirement within the notice to excavate and replace the red hatched area and this is the subject of the ground (f) appeals. Therefore, the hatched area can only be omitted if these requirements are struck out otherwise there would be inconsistency between the wording in the notice and plan thereby introducing ambiguity.

10. Having realised the disparity between the revised plan and notice, the Council produced another plan on the day of the resumed Inquiry outlining the same reduced appeal site but this time including red hatching. The appellants were given opportunity to make submissions on the revised plan and to identify any injustice from its use. The appellants were understandably aggrieved at the lateness in production of this plan and the waste of time in making submissions in connection with the newly omitted area but they raised no objection.

11. As the revision reduces the area enforced against, no injustice would arise to the parties by substituting the plan. In fact, none of the land leased to Appellant D would be affected by the terms of the notice and his appeal falls away.

The grounds of appeal

12. Appeal B was originally brought on grounds (b),(c) and (f). Some of the arguments raised under ground (c) concern the longevity of use for car sales and storage. Such arguments are more pertinent to ground (d) which applies, where at the time the notice was issued, it was too late to take enforcement action. This hidden ground (d) was brought to the attention of Appellant B and the Council prior to the Inquiry. Appellant B confirmed he wishes to pursue an appeal on ground (d). During the Inquiry process, the Council was given opportunity to respond. Therefore, no prejudice arises if I deal with those arguments as though they were brought on ground (d).

13. It was clarified at the start of the resumed Inquiry that none of the appellants assert, as a matter of fact, that the appeal site was not in use for car sales, storage of cars, storage of touring caravans and trailers at the time of issue of the enforcement notice, as alleged. Indeed, in relation to the ground (c) appeal, Appellant A says that "*At all times the site has been used for the storage and retail of vehicles (caravan, car or otherwise)*…". Therefore, the ground (b) appeals would be bound to fail.

14. Despite confirming that the use alleged had occurred, the appellants referred in closing to caravans and trailers being a minor part of the activity. However, it was not contested in evidence that their storage had taken place as part of a primary use within the mixed use. Where there is a mixed use, the allegation should refer to all the components of the mixed use taking place at the time of issue of the notice. The Council's photographic evidence from October 2016 reveals several caravans among the cars stored and displayed. There is no suggestion that the use changed materially after that time. For the avoidance of doubt, I find that the allegation accurately reflects the factual position as it existed when the notice was issued.

15. The arguments raised under ground (b), to the effect that there has not been a material change in use of the land, more properly fall to be considered under ground (c). The appeals proceed on that basis.

16. No appeal was brought on ground (a) to give rise to a deemed planning application to allow the planning merits to be considered. This includes arguments over matters such as the site access, boundary treatments and the proximity of the appeal site to the Conservation Area. Similarly, third party complaint about cars being driven by a juvenile within the site and associated noise/risks, are outside the remit of these decisions.

17. Grounds (c) and (d) are referred to as legal grounds of appeal. When making an appeal on legal grounds the burden of proof is on the appellants bringing the argument and the test of the evidence is the balance of probabilities.

18. The appellants pointed out that the Council's Statement of Case refers to an enforcement notice issued on 21 December 2019. This is obviously a typographical error intended to mean the one which is the subject of these appeals, issued on 21 December 2018.

Whether the enforcement notice is a nullity or invalid

19. Enforcement action is discretionary and it is for the Council to decide if enforcement action is expedient. Under section 172(1) of the Town and Country Planning Act 1990, as amended ('the Act'), it need only appear to the local planning authority that there has been a breach of planning control and that it is expedient to issue the notice, having regard to the provisions of the development plan and to any other material considerations. The appellants cite the former PPG 18 which identified relevant considerations going to expediency, but this is no longer current policy.

20. Criticism is also levied at the Council for failing to engage with the occupiers prior to issuing the notice. That particular issue may give rise to complaint but it is not a matter affecting the validity of the notice or for my determination.

21. Ultimately, whether the Council complied with its duty under section 172(1) falls outside my jurisdiction. Whether it was expedient to issue the notice is a matter for the courts upon an application for judicial review (*Britannia Assets v SSCLG & Medway Council EWHC* 1908 (Admin)).

22. The appellants consider the enforcement notice to be defective in how it is drafted. Where a notice is a nullity there is in effect no notice at all. In those circumstances nothing can be done to correct it or, indeed, form the basis of an appeal. Other defects may make a notice invalid. They may be capable of being corrected under the Inspector's powers in section 176(1)(a) or they may be too fundamental to be corrected without causing injustice and lead to the notice being quashed.

23. It is a well-established and well known principle of the judgment in *Miller-Mead v Minister of Housing and Local Government* [1963] 1 A11 ER 4592 that a notice must tell a recipient of it fairly what he has done wrong and what he must do to remedy it.

24. Section 173 of the Act sets out provisions for the content and effect of an enforcement notice. The notice must, under section 173(8), specify the date on

which it is to take effect. The appellants claim non-compliance with this section because the notice says it "*takes effect on the 7th February 2019 from authorised signature unless an appeal is made against it beforehand*". They argue the effective date is uncertain because it could be 7 February 2019 or some other indeterminable date after the notice was signed. The appellants invite me to find the notice so flawed that it is not an enforcement notice. They contend it is a nullity or should otherwise be quashed for invalidity.

25. A notice must be clear on its face. In this instance, it does specify an effective date of 7 February 2019 which post-dates the issue of the notice on 21 December 2018 and leaves not less than 28 days for service in accordance with section 172(3). No other date is given and it is obvious that inclusion of the words "from authorised signature" was erroneous as the sentence makes no sense unless they are omitted. Those words require deletion but I do not find them to be misleading or to have misled.

26. I am satisfied that I can make the correction utilising my powers within section 176(1) without injustice being caused to either party as the appellants must have realised the only date given in the notice was the one that applied. That is particularly so as the statutory accompanying notes also identify the effective date as 7 February 2019 and the date by which an appeal must be made. The appellants exercised that right. The notice was sufficiently clear to a recipient.

27. Under Regulation 4 of The Town and Country Planning (Enforcement Notice and Appeals)(England) Regulations 2002 an enforcement notice must also specify- (a) the reasons why the local planning authority consider it expedient to issue the notice, and (b) all policies and proposals in the development plan which are relevant to the decision to issue an enforcement notice. The notice identifies two main reasons for its issue which the Council considers cannot be overcome by planning conditions.

28. The first reason describes visual harm from the use and, the failure to meet tests in statute and local/national policies for the protection of heritage assets, such as conservation areas, and the significance of their setting. Attention is drawn by the appellants to the fact that section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, as quoted in the notice, applies "to any buildings or other land *in* a conservation area" whereas the appeal site is not in, but immediately adjacent to, the Dymchurch Conservation Area. Therefore, section 72(1) is not applicable which the Council conceded at the start of the resumed Inquiry.

29. The notice further cites Policy BE4 of the Shepway District Local Plan Review, 2006. It has since been replaced upon adoption of a new local plan in September 2020 but was a current policy when the notice was issued. Policy BE4 related to development affecting conservation areas. It did not explicitly refer to the setting of a conservation area except in the context of trees, verges, and hedgerows. However, the policy required the materials of new development to respect the character of conservation areas and sought to retain open spaces which are essential to the character and appearance of conservation areas. Arguably, those provisions were engaged.

30. It was not wrong for the notice to cite Paragraph 192 of the National Planning

Policy Framework[1] which contained provisions to be taken into account when determining applications relating to heritage assets, albeit there were other paragraphs which could also have been relevant. They included Paragraph 194 which extended protection from development within the setting of designated heritage assets. A conservation area is a designated heritage asset and its significance can be affected by development of land outside that area. Contrary to the appellants' assertions, the Framework is an important material consideration in the determination of planning applications.

31. The second reason for issue of the notice concerns the impact on highway safety from vehicles entering and leaving the site in the absence of boundary treatment. The appellants suggest that it is unclear on the face of the notice whether the complaint is a theoretical possibility should a boundary treatment not exist or based on factual knowledge. To my mind, the language of the notice is plain in referring to the absence of a boundary treatment resulting in an unacceptable and detrimental impact on highway safety.

32. The appellants assert that this reason is wrong because a row of steel bars is located along the appeal site frontage preventing vehicular access to/from the highway. The Council disputes the barriers existed when the notice was issued.

33. Had the appellants wished to take issue with the substance of the reasons given in the notice, then an appeal should have been brought on ground (a) and payment of the requisite fee to allow the planning merits to be considered. None of the appellants availed themselves of this option.

34. The third paragraph within the reasons for issue of the notice identifies that the Council's objections in its first two reasons cannot be overcome by planning conditions. Whilst this is not a separate ground upon which planning permission would be refused in itself, it forms part of the reasons why the Council resorted to enforcement action rather than inviting a planning application for the development enforced against. It would be relevant in the event of a ground (a) appeal. It is not a defect with the notice.

35. The appellants rely upon the Court of Appeal decision in *R v Shayler* [2005] All ER to support the contention that the notice is null. That case concerned criminal proceedings brought for an offence under section 179(2) of the Act for breach of an enforcement notice requiring removal, or reduction in size, of a fence. Read as whole, it was clear the notice referred to only one fence whereas there were two fences enclosing the property. The Court found that if it was intended to apply to two fences, it did not, and accordingly the notice failed to comply with section 173 of the Act.

36. It is difficult to draw comparisons with *Shayler*. These are not criminal proceedings and in *Shayler* there had been no appeal against the enforcement notice in which the drafting might have been addressed. For the purposes of section 173(1), an enforcement notice must state the matters which the local planning authority consider to constitute the breach of planning control. Section 173(1) is fulfilled if it enables any person on whom it is served to know what those matters are (section 173(2)). Unlike *Shayler*, it has been established in this case that the notice correctly describes the development alleged to be

[1] As applicable in 2018. The Framework has since been updated on two subsequent occasions, most recently on 20 July 2021.

taking place in breach of planning control. The appellants also clearly knew the nature of development under attack from their submissions.

37. It was erroneous of the Council to cite section 72(1) in the reasons but there were potentially relevant local and national planning policy considerations relating to the setting of conservation areas. Ultimately, reasons have been provided whether or not they are well founded. The requirements of section 173 and the 2002 Regulations are met. Inadequate or incorrect reasons are unlikely to result in the nullity or invalidity of a notice in any event.

38. There are other matters with the enforcement notice to be addressed. For consistency, the allegation and requirements should match. Therefore, the second requirement within the notice should require removal of "cars" instead of "vehicles" and "touring" caravans. Without those changes the requirements would be wider than the allegation which cannot be correct.

39. There is a minor typographical error in step 6) of paragraph 5. where the word "it" is omitted after the words "Level the topsoil so that". The sentence can still be understood and given my findings on ground (f), no correction arises.

40. The Council confirmed at the Inquiry that the allegation is directed at a mixed use of the land. This was plain from the number of primary uses listed in the allegation. For precision, the words "mixed use" should be added to the allegation and the corresponding requirement and this was agreed at the Inquiry. Such correction does not alter the substance of the notice.

41. Having considered the matters raised and other typographical points, I am not satisfied that there is any matter or matters either singularly or collectively that render the notice null or invalid. Where corrections are due, I am satisfied that they can be made without injustice to any party.

Reasons

Appeals A, B and C - ground (c)

42. A ground (c) appeal is that the matters alleged in the notice do not constitute a breach of planning control. In essence, the appellants must demonstrate that either development has not occurred for the purposes of section 55(1) of the Act because there has been no material change of use from the lawful use or that the use benefits from planning permission. The appellants argue both.

Whether the use benefits from planning permission

43. The appeal site is owned by Appellants A and C. Their land ownership extends to the neighbouring garage where a vehicle sales and repair business is operated at Nos 76/78 High Street. It includes buildings and a forecourt at the front where there were petrol pumps at one time. Historically, an area of hardstanding between the garage buildings and the appeal site has been used for the parking of cars. This land is leased to Appellant D, part of which had fallen within the appeal site as shown on the enforcement notice plan prior to its revision. The appeal site is occupied by Appellant B under the terms of a lease with Appellants A and C.

44. In his written submission Appellant A explains that the land which is the subject of the enforcement notice forms part of a larger area that has been used as a

garage site for around 60 years and "the primary purpose of this part of the site is the storage and retail of vehicles". It is maintained that the appeal site benefits from express planning permission which has not been lost.

45. Reliance is placed on *Pioneer Aggregates (UK) Ltd v SSE* [1984] 2 All ER 358 as authority that a planning permission which is capable of being implemented cannot be abandoned. That does not mean rights acquired through a planning permission cannot be lost in a number of other ways. *Panton & Farmer v SSETR & Vale of White Horse DC* [1999] JPL 461 provides authority that lawful use rights can only be lost by evidence of abandonment; by the formation of a new planning unit; or by being superseded by a further change of use. A use which was merely dormant or inactive could still be considered as 'existing', so long as it had already become lawful and not been extinguished in one of those three ways. *Thurrock BC v SSETR & Holding* [2002] EWCA Civ 226 confirms that the principle only applies when lawful use rights have been accrued. That position differs from the scenario where there is a grant of planning permission.

46. Historically, a repair workshop and petrol filling station were erected with the benefit of planning permission granted in 1950. A further planning permission was granted in 1964 for "the erection of a new car showroom and wash bay with additional pump island and facilities for car parking and storage". This information is known because of references made within an appeal decision letter of the Ministry of Housing and Local Government dated 21 May 1969.

47. The appeal had followed the issue of an enforcement notice relating to the use of the land at The Dymchurch Garage, 76/78 High Street as a public car park. In allowing the appeal on one ground, it was found that "the [1964] permission was unqualified in relation to car parking" and on its true construction the words "facilities for car parking and storage" included public car parking. Thus, planning permission had been granted for such development.

48. The 1969 decision is not a grant of permission but it records how the land under consideration at that time had previously been used for staff parking or cars for repair which was merely ancillary to the main use of the premises as a garage. A material change of use had taken place when a row of cottages was demolished in 1966 and 'most of the site' was filled and levelled and used for the parking of about 60 vehicles unconnected with the garage.

49. However, there is no plan identifying the extent of the land covered by the 1964 permission and neither the application nor decision itself is available[2]. Indeed, the 1969 decision letter records how the Council at the time of the Inquiry appeared to have doubts over the extent of the land which was the subject of the application. An OS map produced by the applicant's agent in July 1964 showing the whole of the landholding could not be looked at in construing the 1964 permission. The decision letter notes that the enforcement notice plan was incorrect and intended to relate only to that part of the site north of the garage buildings. Whether that area extended as far as the current appeal site cannot be ascertained.

50. When permission was granted in 1964 for "the erection of a new car showroom" it would implicitly include use of the building for the purpose for which it was built i.e., car sales. The 1964 permission is recorded as including "facilities for

[2] The Council says its records go back to 1974 only.

car parking and storage" but it does not mention car sales on the land in question (wherever that might be). Although car sales and the storage of cars are part of the mixed use enforced against, there was no express grant of permission for the storage of touring caravans and trailers. Without a copy of the 1964 permission, it is not only unclear what land was included but it is also unknown whether any conditions restricted the type and extent of use. The position is far too uncertain for reliance to be placed upon the 1964 permission in relation to the appeal site. It is plain that the current use cannot be ancillary to the garage which is operated as a wholly separate business.

51. An application for a 'proposed car sales display area' was refused planning permission on 12 January 1967. The accompanying application plan shows the 'car display/sales area' as a rectangular area including part of the hardstanding now leased to Appellant B along with part of the appeal site fronting High Street. How that area relates, if at all, to the public car park is unknown.

52. In any event, the 1964 permission can only be of significance if there was no further development affecting the appeal site or change in the planning unit. Even if a lawful use existed which included the appeal site for car sales and storage authorised by the 1964 permission, it was capable nonetheless of being extinguished by the creation of a new planning unit in respect of the land in question.

53. In *Jennings Motors Ltd v SSE & New Forest DC* [1982] 2 WLR 131 it was held that the erection of a new building did not necessarily create a new planning unit or give rise to a new chapter in the planning history. Whether a change in the physical nature of the premises or its planning status gave rise to an inference that reliance on a prior use was being abandoned and a new planning history was about to begin was a question of fact and degree in each case. The decision is authority that the opening of a new chapter in planning history may occur when there is a radical change in the nature of the buildings on site or the uses to which they are put—so radical that it can be looked on as a fresh start altogether in the character of the site. If there is such a change and the occupier applies for permission and gets it subject to conditions, and acts on that permission, he cannot afterwards revert to any previous existing use rights.

54. A grant of permission for a use of land authorises that use but it does not continue for all time if there is a further material change of use. Once the change of use has been made, the first permission is spent.

55. Whilst the appellants seek to make comparisons with development permitted in 1964, there has been a long planning history since then which warrants consideration. In May 1979, planning permission was granted (Council ref: SH/79/0228) for the use of land covering the appeal site as a caravan display area. It was subject to a planning condition restricting the number of caravans to no more than 15. There is consensus this permission was implemented. The Council flags up that the caravan display area was a grassed area separate and distinct from the hardstanding used for car parking. The Council submits that this 1979 permission is the lawful use of the appeal site.

56. Upon commencement of development pursuant to the 1979 permission there would have been a new chapter in the planning history. Once the material

change of use was made the 1964 permission was spent[3] in relation to that land (if it did apply in the first place). The lawful use of the land in question, including the appeal site, became a caravan display area.

57. The limit on the number of caravans was subsequently increased in 1986 by variation of the condition for a time limited period until 31 July 1988. By 1986 the caravan business was run by Bryants Caravans, being a separate business from Checksfields Garage and there would have been separate planning units. An application made in 1992 for the use of the caravan display area (including the appeal site) for the sale of cars, caravans and boats was refused. The application indicated that 'previous permission for car sales has now lapsed'. As permission had only ever been granted for caravan sales the reference to car sales is presumably a typographical error.

58. There followed the grant of permission for the 'change of use of land to display and retail use for the sale of sheds' under Council ref: Y10/0238/SH on 29 October 2010. It is agreed that this permission was never implemented.

59. Temporary permission was granted retrospectively on 5 January 2012 (under planning ref: Y11/1010/SH) for a car sales use over a 2-year period which expired on 5 January 2014. It was a condition of that permission that the use cease on or before that end date and the land returned to its former condition. This permission corresponded with the current appeal site.

60. A further retrospective application for a change of use for car sales was made by Appellant B on 1 August 2017 (planning ref: Y17/0944/SH) over an extended area including the triangular shaped area leased to Appellant D. That application was refused by the Council on 8 December 2017.

61. Thus, the 2012 permission for use of the appeal site for car sales expired and the 2017 application for a car sales use on that land (and beyond) had failed.

62. Upon expiry of the limited period permission in January 2014, section 57(2) of the Act allowed reversion of the land to its use for the purpose for which it was normally used before the permission was granted. In determining the normal use, no account can be taken of any use begun in breach of planning control (section 57(5)). The normal use does not encompass uses which have become lawful through immunity from enforcement due to the passage of time under section 171B. Therefore, the use could not lawfully revert to a car sales and storage use as the appellants argue even if one had become established over time. Further, the normal use cannot have been that authorised by the 1964 permission when there was an intervening grant of permission in 1979.

The planning unit

63. According to the appellants, there is a single planning unit composed of the whole landholding belonging to Appellants A and C which encompasses the garage building and forecourt together with the land to the north, up to and including the appeal site. The Council, on other hand, contend that the appeal site is a single planning unit.

64. It is consistent with case law including the judgment in *Burdle v Secretary of State for the Environment* (1972) 1 WLR 1207 that the planning unit should be

[3] *Cynon Valley BC v SSW* [1986] JPL 760

determined by identifying the unit of occupation and whether there is physical and/or functional separation of primary uses as a matter of fact and degree. There is no dispute on those principles.

65. Three broad categories of distinction were identified in *Burdle*: 1) a single planning unit where the whole unit of occupation is used for one main purpose and any secondary activities are incidental or ancillary; 2) a single planning unit that is in a mixed use because the land is put to two or more activities and it is not possible to say whether one is incidental to another; and 3) the unit of occupation comprises two or more physically separate areas that are occupied for substantially different and unrelated purposes. In such a case, each area used for a different main purpose, together with its incidental activities, ought to be considered as a separate planning unit.

66. At the Inquiry submissions were made by both sides regarding the significance or otherwise of a row of used tyres along the southern boundary of the appeal site which denote the boundary between the areas of land leased to Mr Peters and Mr Puttock. The appellants say the tyres are a temporary feature and do not suffice to create physical separation.

67. The Council drew my attention to the High Court judgment of *Searle v SSE & East Hampshire DC* [2006] EWHC 1908 (Admin) where it was held that the reference in *Burdle* to physical and functional separation does not mean that there has to be a physical barrier between the two areas of land. It is a question of deciding whether there is in fact such a physical separation. Of course, the existence of some sort of barrier will help to determine if that is indeed the case but the absence of such a barrier is not fatal.

68. Official Copies of the title from HM Land Registry confirm the appeal site is subject to a Lease granted by Appellants A and C for a term of years from September 2012 to September 2027. The tenant is Mr Peters (Appellant B). Mr Puttock (Appellant D) produced his Lease, for the same term, of the land immediately to the south of the appeal site.

69. Companies House records reveal that Mr Puttock is director of Fairways Garages Ltd at 76-78 High Street, Dymchurch. The nature of the business is described as 'maintenance and repair of motor vehicles'. Mr Peters is registered as the director of Dymchurch Car Centre Limited, the nature of the business being 'sale of used cars and light motor vehicles'. Thus, they are separate legal entities albeit Mr Peters advertises his business at the same address.

70. The documents provide firm evidence Appellants B and D are entirely different occupiers operating separate businesses from their respective areas of land leased.

71. The appellants say that the position on site is fluid with levels of cars displayed and stored fluctuating and the use spreading into the area south of the appeal site. Whilst on site I observed a row of cars displayed for sale along the highway frontage extending into the adjacent land leased to Mr Puttock (Appellant D). I also noted a single vehicular access point. They otherwise appeared distinct. Cars were formally displayed for sale on the appeal site with a static caravan advertising 'Dymchurch Car Centre' operating as a sales office. This was distinguishable from the neighbouring land lying next to the building with 'Fairways Garage' on the fascia. The few cars parked (behind those on

display on Appellant D's land) appeared to relate to the vehicle repair business with its prominent advertising of a tyre fitting service.

72. If there were inter-related activities in the use of areas there might be a larger planning unit despite different occupants. However, there is little evidence that this is how the land has been used. Neither Mr Peters nor Mr Puttock attended the Inquiry to give evidence of their use of the land and arrangements in place. As the landowners do not have first-hand knowledge of the arrangements between their tenants or how it has been occupied in practice, they were unable to provide any meaningful substantiation of their claim of a single planning unit covering the entirety of their landholding.

73. The appeal site is clearly in separate occupation from the garage to the south. They function separately and differently. The land to the south is a vehicle repairs business with what appears to be ancillary parking whereas the appeal site is a mixed use of primary uses for car sales and storage and storage of caravans and trailers. Measures have been put in place to define the boundary between the different occupants and it does not matter that the means of physical division is piles of tyres. Both physical and functional separation exist.

74. On the information presented, I am satisfied that the appeal site is a single planning unit separate from the remainder of the land holding. It follows that the land cannot benefit from permission granted in respect of the garage use. Based on the planning history, the last authorised use which had taken place on the whole appeal site was for the display of caravans pursuant to the 1979 permission. The question turns to whether there has been a material change of use from the last lawful use constituting development for the purposes of section 55 of the Act.

Materiality

75. A permission for the display of caravans does not permit car sales or a storage use whether for caravans or cars. That does not automatically mean the change of use is 'material' so as to amount to development. As set out in *East Barnet UDC v British Transport Commission* [1962] 2 QB 484 whether there is a material change of use of land is a matter of fact and degree in every case.

76. Both sides cite *Hertfordshire CC v SSCLG* [2012] EWCA Civ 1473, a case involving intensification of a use which constituted a material change of use. The Court confirmed that the right test for deciding whether there has been a material change of use was whether there had been a change in the character of the use. In making that assessment, the impact of the use on other premises was a relevant factor. It was necessary to consider both what was happening on the land and its impact off the land.

77. The Council points out that a use for the sale or display of motor vehicles is explicitly identified as having no use class specified within the Town and Country Planning (Use Classes) Order 1987, as amended. That is so, but it is a mixed use of the land which has taken place and is enforced against rather than a use limited to the sale and display of cars. More pertinently, it is the single mixed use composed of the identified primary uses which is *sui generis* (i.e., outside of any use class).

78. The appellants argue there is no material difference between caravans and

motor vehicles in terms of land use. They cite *Marshall v Nottingham Corporation* [1960] 1 WLR 7071; All ER 659; P & CR 270, where there was found to be no material change of use of a site used for the sale and small scale manufacture of garden sheds after it was hard surfaced and used for the sale of caravans not manufactured on the premises. The judgment is authority that the mere fact that a dealer in the course of his business begins to deal in goods in which he had not dealt with before does not necessarily involve a change, still less a material change in his use of the land.

79. In response, the Council highlights how 'caravans' have a specific definition in law as set out in the Caravan Site and Control of Development Act 1960 and the Caravan Sites Act 1968 and 'cars' do not fulfil that definition. Even so, it is the way that the land is used that must be considered and its effect on the character of the site and its surroundings.

80. The appeal site is not used for caravan display but storage of caravans and trailers along with car sales and storage. Such a mixed use has different planning consequences. Storage is not the same as sales; it involves caravans, trailers and cars remaining in situ, perhaps indefinitely. In contrast, sales will invariably see cars/caravans being regularly moved on and off site and likely to be displayed more prominently and attracting potential customers visiting the site. Visually, there is a difference between bulky caravans compared with the size of cars and this has relevance in the context of the adjoining conservation area. The impacts do not need to be worse to be materially different.

81. Notably, the caravan display was controlled by condition in the 1979 permission in terms of the spacious layout of the site and the number of caravans screened by planting to the frontage. That differs appreciably from the unlimited numbers of cars being displayed prominently for sale with other cars, caravans and trailers also stored across the site.

82. Not only is there a sufficient difference between the display of caravans and the single mixed use that has occurred to give rise to a material change of use, but there is also a far greater intensity of use than authorised by the 1979 permission which would in itself represent a material change of use.

83. I conclude that as a matter of fact and degree the matters alleged in the notice constitute a breach of planning control.

Appeals B and C - ground (d)

84. In cases such as this where there is a material change of use of land, no enforcement action may be taken after the end of the period of 10 years beginning with the date of the breach of planning control (section 171B(3)).

85. To succeed on this ground the appellants must demonstrate that the change of use to a mixed use for car sales and the storage of cars, touring caravans and trailers occurred at least 10 years prior to the date of the issue of the enforcement notice on 21 December 2018 and continued without material interruption for a period of 10 years after the date of such change.

86. The period need not necessarily be that immediately preceding the issue of the notice so long as there has not been reversion to the lawful use or another material change of use in the intervening period.

87. An appellant's evidence should not be rejected simply because it is not corroborated but the onus is on the appellant to produce sufficient evidence which meets the balance of probabilities test.

88. In evidence, Mr A Checksfield (Appellant C) maintained that a car sales use had gained immunity by 2000. This cannot be so because the site was stated to be vacant when a planning application was submitted by Nortons Dymchurch (Ltd) in 1998 and so the requisite 10 year period could not have accrued by the year 2000. Under cross-examination, Mr Checksfield suggested the applicants may have meant that they were not using the land but others were. I find that to be a strained interpretation of the word 'vacant' and without foundation.

89. Mr G Checksfield (Appellant A) submitted that the site has been in its current use since at least 2001. A statement dated 26 February 2020 is produced from Mr Peters (Appellant B) which says he started trading from the show room in 1998 along with the display areas, including the grass area. He vacated the showroom in 2015 but continued to trade on the grass area "until the present time". The unsworn statement is signed but Mr Peters fails to identify where he means by "the grass area" and the statement is lacking in any real detail. For instance, it does not specify the level or type of use, if the use was continuous and no mention is made of caravans or trailers. It carries limited weight only.

90. A letter from Fairways (Dymchurch) Ltd sent to the Checksfield family solicitors on 8 November 2007 explains that the premises at 76-78 High Street were under lease to Nortons (Dymchurch) Ltd from 1994-2004. In June 1998 the director of Nortons sub-let the car sales area to Mr Peters but "it appears that no formal agreement was put in place". A Licence agreement was produced during the Inquiry between Messrs A and G Checksfield and Mr Peters for land to the east of Fairways Garage commencing on 23 March 2011. As there is no plan with either the letter or Licence it cannot be gleaned which land is being referenced and Mr Peters did not attend the Inquiry to provide clarification.

91. A valuation of Norton's Garage was undertaken by chartered surveyors whose letter of 29 April 2002 describes the property as comprising "*a garage, fuel service station and car showroom plus parking and spare land*". It describes how "*the demised area includes two areas of open ground. Part is surfaced and used for parking and car cleaning. The remainder is laid to grass*". The permitted use under the lease is stated to be "*to use as a garage and petrol filling station repairing and service station and sale of motor cars*". The plan appended to the letter outlines the entire garage building, adjacent show room, forecourt and land to the north including the appeal site.

92. When read in conjunction with photographic material, the most likely conclusion is that the appeal site is the area of open ground laid to grass. The letter does not state when the valuation was carried out but it would serve no purpose if it were not recent. However, the letter does not assist the appellants as it does not identify a mixed use of the appeal site including storage.

93. Much Inquiry time was spent examining a series of aerial and other photographs, including street view images produced by both sides.

94. The Council's aerial photographs illustrate that the caravan display use had ceased by the start of 1990 and the appeal site is a vacant grassed site.

95. Several of the appellants earliest aerial photographs have the date typed on the sheet beneath the image rather than printed on it. Taken at face value, they start from 2001 when the appeal site appears grassed with only a couple of vehicles evident although there are patches in the grass where others might have been. A row of vehicles has appeared along the appeal site frontage in the Council's aerial image of 2003 continuing in an unbroken line across the adjacent site frontage. Behind the vehicles, the appeal site is open grassed land with a small number of other vehicles around the southern boundary.

96. The layout has changed in 2005 where the appellants aerial image shows as a long row of cars along the northern boundary with a shorter row along the southern boundary. The cars are parked side-on rather than facing towards the highway in a typical arrangement utilised for vehicles being displayed for sale.

97. The following year, the 2006 image shows a single parked car on the grass. Vehicles are parked on or near to the southern boundary but which side of it is unclear. The site otherwise appears vacant. That remains the position in 2007. In 2008, about 4 cars are positioned along the appeal site frontage with the remaining land vacant.

98. In April 2011, the aerial image shows the first signs of greater activity on the site which appears far less green and vehicles can be seen on the western half. Whether they are parked or being displayed for sale cannot be ascertained. A photograph from September 2011 shows part of the site with some cars which could be for sale but the whole site is not in view. Perhaps a couple of vehicles, at most, are present in the aerial image of 2013 although the surface looks patchy. What appears to be a static caravan is sited in the south-western corner. The position remains very similar in July 2014.

99. The major change comes about in April 2017 where rows of vehicles are positioned in formal rows pointing towards the road deep into the site. The land is now a different colour consistent with hard surfacing. The site looks similar in August 2018 with caravans also visible.

100. In terms of the street view images produced by the Council, in March 2009 a row of cars is displayed for sale on the adjacent land but not on the appeal site which is a grassed open area. Later that year in August 2009, the land has high overgrown grass with a single vehicle parked in the middle. The adjacent hard surfaced area next to the garage (now leased to Appellant D) is covered with numerous cars for sale.

101. In August 2015, the street view again shows a row of cars lined up for sale along the adjacent site frontage. A static caravan is behind the cars advertising a hand car wash. Only a touring caravan can be seen on the appeal site which remains grassed at the front at least. In sharp contrast, the street view image of August 2016 shows the appeal site full of vehicles including a row lined up along the frontage with prices on the windscreens. Caravans and a trailer can also be seen and the ground is hard surfaced.

102. Of course, photographs are only a snapshot of that moment in time. What they indicate is a vacant grassed site in 1990 which remained largely unused until signs of activity from around 2011 when more vehicles can be seen. This tallies with the retrospective planning application for car sales being granted for 2 years from 5 January 2012. The images suggest that the presence of cars had

largely ceased by 2013/2014 and started to resume again in 2015. The appellants suggested that this simply reflected the nature of the business with cars being sold and deliveries awaited. That may be so or it may demonstrate an intermittent and low level use. However, it was not until 2016 when activity can be seen from the photographs to have noticeably increased.

103. It was the sworn evidence of Mrs Checksfield that for 50 years she has parked her car over the whole site, including the grass within the appeal site, for various purposes including to go to church. She acknowledged there were 'probably' times when only some cars were present. Ad hoc parking on the grass does not verify the mixed use (but it may account for the small number of cars evident in some aerial images). Parking is not the same as storage as confirmed in *Crawley BC v Hickmet Limited* [1997] 75 P. & C.R. which held that the two concepts are distinct and mutually exclusive, nor is parking the same as sales. A car is still in use when parked whereas storage takes place when something is put away for a period of time because it is not needed or its use is not contemplated in the short term.

104. Whilst Mrs Checksfield's proof of evidence refers to the site being used for car sales, storage of cars for sales, storage of touring caravans and trailers, she confirmed this meant Mr Puttock's land.

105. The photographic material needs to be considered in the context of other documentary material. The planning history is of particular note. Starting with the most recent, planning permission was refused on 8 December 2017 for the use of land (including the appeal site) for car sales in connection with the existing business at Nos 76-78 High Street. The application was made in August 2017. The Council's reasons for refusal refer to the "*continued use of the site for the storage and sale of vehicles*." This is clear evidence the land was already in use for car sales and storage at that time.

106. There was no breach of planning control for a car sales use when planning permission (ref. Y/11/1010/SH) was granted for such use of the appeal site for a temporary period between 5 January 2012 to 5 January 2014. If car sales had begun on the site in 2002 as the appellants claim and continued thereafter to gain immunity from enforcement action then there would have been no need for the 2012 permission. Clearly, Mr Peters (as applicant) must have thought that planning permission was required. There would also be no reason to apply retrospectively for a car sales use only if, in fact, the site was also being used for primary storage purposes.

107. During the Inquiry Mr G Checksfield suggested that the Council had pressurised Mr Peters to make the 2012 application by threatening enforcement action. That is no more than supposition as Mr Peters did not attend to give his own account and it was denied by the Council.

108. The appellants' position is also contradicted by the street view images of August 2009 where the site is overgrown and vacant grassland. Either the mixed use had not begun or there was a break in continuity.

109. Moreover, there is firm documentary evidence that car sales had only just begun on the appeal site when the planning application was made in October 2011. The application was "*For change of use to the grass area from caravan sales to car sales*". The box is ticked on the form to say that the change of use

has been completed with a handwritten note alongside saying "*car sales on grass from now*". At the date of the application, the existing use is described as "*grass area to one side of existing sales area for motor vehicles, area was vacant. However, car sales now in use*." The application site encompassed what is now the appeal site. On a plain reading of that language, it is evident that car sales had only recently begun.

110. The accompanying design, flood risk and access statement described the application site as an area next to the garage *"once used for caravan sales, it now provides temporary and informal parking for the garage*." It explains that the site will be managed from the existing car show room on the adjoining site.

111. A retrospective planning application was made in July 2017 for use of the entire appeal site 'for vehicle sales' stating that the use began 5 January 2012. That tallies with the grant of temporary permission with effect from that date.

112. The use now enforced against is not confined to car sales but extends to the *storage* of cars, caravans and trailers. What is now alleged is a single mixed use composed of all the uses identified. They are not the same uses. Having gone to the trouble of making a planning application, the use being applied for in late 2011 and 2017 was logically the one taking place at those times indicating that the mixed use began later. The addition of another primary use would constitute a further material change of use from when the 10 year immunity period would start afresh.

113. Even if the mixed use began in late 2011 around the time of the planning application and the use undertaken did not correspond with that authorised by the subsequent grant of temporary permission because it included a primary storage use, a period of 10 years continuous use in breach of planning control still cannot be shown.

114. As it is, in October 2010 the Council's Development Control Committee was presented with a report for an application (ref Y10/0238/SH) for the change of use of the appeal site to the display and retail use for sale of sheds. Some car sales were taking place as the report records that "*During one visit to the site, it was noted that some of the cars from the sales were spilling over onto the application site."* However, there is nothing to indicate that this was more than *de minimis,* or more significantly, that the alleged mixed use was taking place. In fact, the report indicates to the contrary describing the application site as "*an open space of grassed land*" and "*The site has been unused for some time*".

115. Mr Williams gave evidence in support of Mr Peters but as a neighbour living opposite the site since March 2010, his evidence did not extend over a full 10 year period required to demonstrate immunity.

116. Having regard to the totality of evidence before me, the appellants have failed to discharge the burden of proof to demonstrate that the use enforced against commenced more than 10 years prior to the issue of the enforcement notice and continued uninterrupted thereafter in breach of planning control so as to become immune from enforcement action.

117. The ground (d) appeals fail.

Appeals A,B and C - ground (f)

118. A ground (f) appeal is that the steps required by the notice to be taken are excessive.

119. Section 173 of the Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. These are either to remedy the breach of planning control which has occurred (section 173(4)(a)), or to remedy any injury to amenity that has been caused by the breach (section 173(4)(b)). It is not explicit in the enforcement notice which of these purposes the Council seeks to achieve. By requiring the permanent cessation of the unauthorised use and restoration of the land, it is evident that the notice must seek to remedy the breach. The Council confirmed that was its intention.

120. The appellants take issue with the requirement to excavate to a depth of 30cm all hardstanding within the area hatched red on the enforcement notice plan. The hardstanding has not been attacked in the allegation but is required to be removed and the land reinstated to grass.

121. It was the sworn evidence of Mr A Checksfield that he had been tasked with spreading hardcore across the appeal site and wider area during the 1960's. That clearly did not prevent grass growing across the appeal site and the appellants suggest that grass had grown up through the hardcore. Mr Miles, the landscape contractor who had undertaken works at the site for the landowners, confirmed that was possible and had occurred. Council Officers had not dug down or examined the surface in any detail. The evidence of Mr Allan was that the presence of hardcore beneath the grass was not visually obvious in 2012. That corresponds with numerous photographs, including aerial images which show the appeal site as a green area. The earlier photographs from August 2009 show what appears to be dense and overgrown grass. In one, a figure is walking across the grass carrying a lawnmower.

122. Section 173(5) gives power to require the removal of works for the purposes of remedying the breach. Therefore, the notice can require removal of the hardstanding if the works for its formation were solely undertaken for the purpose of facilitating the material change of use. Case law further confirms that the works must be integral to or part and parcel of the making of the material change of use. In those circumstances there is no need for the works to be referred to in the allegation.

123. It was held in *Murfitt v SSE* [1980] JPL 598 that where an enforcement notice is directed as a material change of use and works were carried out to facilitate the material change of use then the notice may require that the works are removed in order that the site is restored to its previous condition and the breach is thereby remedied.

124. In *Kestrel Hydro v SSCLG & Spelthorne BC* [2015] 1654 (Admin), [2016] EWCA Civ 784, the requirement in an enforcement notice that a hardstanding and various structures erected to serve the unauthorized use of the land be removed was held to be a requirement the Council could properly impose under section 173(4)(a). They were all integral to the unauthorized use and ancillary to it. These were the physical manifestation of the unauthorized change of use. The judgment endorsed the principle that an enforcement notice directed at an

unauthorised material change of use may lawfully require the removal of integral operational development.

125. When planning permission was sought in 2011 for car sales use on the appeal site in connection with the existing business, the application documents described the land as "grassed". This is reflected in the description of development applied for which is the "*change of use to the grass area from caravan sales to car sales*".

126. The application makes clear that the hardstanding on the appeal site had not yet been laid or at least not in the form that now exists. Furthermore, the submitted Design, Flood Risk and Access Statement stated that a layer of road chippings would be spread where necessary to protect the existing surface and "*the land which is grassed will be regularly maintained*".

127. Therefore, the hardstanding which now exists and the appellants say is 60cm deep, cannot have been laid pursuant to the temporary car sales permission which was granted permission in January 2012 as that permission entailed no more than a spreading of road chippings to protect the grass.

128. Mr Miles gave sworn evidence of works undertaken by his business across the appeal site in 2011 and 2012. Those works included digging to install new fence posts and laying drainage pipes. In undertaking those works he said it was obvious the ground was made up of hardcore with infill across the whole site. This supports Mr A Checksfield account of the historic laying of hardcore during the 1960s. Mr Miles' invoice of 7 February 2012 (paid 12 February 2012) includes the supply and laying of 20 tonnes of crushed hardcore. The total sum of works was £666.00. The position of the hardcore to be laid is hatched on a hand-drawn sketch, also dated February 2012. This covered only a portion of the appeal site and not the much larger area of hardstanding illustrated on the revised enforcement notice plan.

129. Mr Miles confirmed that he is one of the two workers undertaking ground works at the appeal site in a photograph taken by the Council in February 2012. There are a couple of small piles of crushed hardcore which Mr Miles confirmed was being used to make good and repair potholes. At this point there was still grass shown in the photograph across the wider site. Mr Miles called it "rough grass self-sown on top of the hardcore".

130. The aerial images dated September 2012 do not show hard core topping in the location illustrated on Mr Miles' drawing. There are a couple of lighter patches but they were present in the 2008 and earlier images. It might be anticipated that if 20 tonnes of hardcore had been laid as per the drawing that it would be evident in aerial images. It appears more likely that the distribution of hardcore was no more than filling potholes and making good after installing drainage pipes or the minor works to protect the grass as envisaged by the temporary 2012 permission. Even if some hard surfacing was laid at that time in accordance with Mr Miles' drawing, it was a limited area and nowhere near as large as the hardstanding that now exists.

131. Mr A Checksfield states that additional works were carried out late 2012 and in 2013 to improve conditions during the winter months by adding a top dressing of road scalpings. He produced a handwritten invoice from a building contractor dated 10 October 2012 "*To prepare ground at Dymchurch Car Sales*

and supply and lay 20 ton [sic] of road scalpings at the sum of £20.00 per ton and erect fence" at a total cost of £3,500. It is endorsed "*paid in full*". If correct, it would mean 40 tonnes of road scalpings had by this time been laid in total. A further invoice from the same contractor is dated 14 November 2013 "*To supply and lay road scalpings at rear of land at Dymchurch Car Sales at the cost of £1700*".

132. The Council flagged up the disparity in costings between the invoices where the supply and laying of 20 tonnes of hardcore was £666 in one invoice and £3,500 in another a matter of months later. The reason is unknown and I do not draw inferences.

133. Mr Allan was the Council's Case Officer at the time of an application for the use of the land to car sales in connection with the existing garage business in 2011-2012. His oral evidence was that he clearly recollected seeing grass on the appeal site on 12 October 2012 (as appears in his photograph of that date) only two days after the additional hardcore was invoiced. Mr G Checksfield sought to suggest that the invoice could have been paid before the works were undertaken. If that was so, it does not explain why such a large quantity of hardcore was not apparent either to the Officer or in aerial images in 2013 when the land is still a largely green expanse with some perimeter foliage.

134. In April 2015 the surface appeared very patchy with grass centrally and at the edges. Hard surfacing had clearly been laid by August 2016 when the appeal site is shown on the street view image full of cars and caravans. The evidence points firmly to new hardstanding having been laid across a large part of the appeal site to accommodate the unauthorised use now enforced against.

135. Given that the notice does no more than seek to achieve the purposes of section 173(4)(a), it is not excessive to require reinstatement of the land. The question is whether the requirements go beyond what is reasonably necessary to remedy the breach.

136. There is no power to require improvements or restoration beyond its previous condition before the breach of planning control occurred. According to the Council, the works now required would result in the land being brought to the same height as the land immediately adjacent to the site boundaries which it considers to be the original land level. The appellants on the other hand say that the neighbouring public footpath was always at a different level to the appeal site.

137. If the appellants are right and the hardstanding is 60cm deep because of pre-existing hardcore laid historically, the notice does not require its total removal. It requires excavation to a depth of 30cm with replacement topsoil to that depth. When I asked the Council's Enforcement Officer how the depth of 30cm had been arrived at, I was informed that advice was taken on however much was needed to reinstate the grass and allow it to grow. This indicates that the Council has prescribed measures to secure conditions for grass to grow rather than achieving a return of the land to its condition before the breach occurred. They are not necessarily one and the same. It is not known if the hardstanding which was laid to facilitate the mixed use is 30cm deep and there is little evidence of previous land levels. Therefore, the requirements state measures which are capable of going beyond a remedying of the breach.

138. I note that upon cessation of the car sales use under the temporary 2012 permission, it was a condition that the land be returned to its former condition or before 5 January 2014. This would have been as a 'grass area' as described in the application. By 2015 the land appeared to be grass. It was not wrong for the Council to require the return of the appeal site to grass. However, it has been overly prescriptive in how this should be achieved and identifying the resultant land levels when the full extent of works required to remedy the breach cannot be readily ascertained or the Council be expected to know.

139. The correct approach should be to require removal of the hardstanding which facilitated the unauthorised material change of use and reinstatement of the land to its former condition before the breach took place as a grass area.

140. I shall vary the notice accordingly. To this limited extent the ground (f) appeals succeed.

KR Saward

INSPECTOR

APPEARANCES

FOR APPELLANTS A,C & D:

Graham Checksfield	Appellant A, also acting for Appellants C & D
He called:	
Andrew Checksfield	Appellant C
Pamela Checksfield	Witness
Colin Miles	Witness
John Williams	Witness

FOR APPELLANT B

Thomas Quaye	Planning agent

FOR THE LOCAL PLANNING AUTHORITY:

Emmaline Lambert	Of Counsel, instructed by Chief Planning Officer
She called:	
Lisette Patching BA (Hons) PGDIP TP	Enforcement and CIL Team Leader
Robert Allan BSc (Hons)	Principal Planning Officer

DOCUMENTS submitted at the Inquiry

1	Revised enforcement notice plan with red hatching
2	Copies of streetview images produced by the Council on 23 February 2022
3	Copies of aerial photographs produced by the Council on 23 February 2022
4	Supplementary proof of evidence of Robert Allan
5	Summary *R v Shayler* [2005] All ER
6	Graham Checksfield opening statement
7	Council's opening submissions
8	Report of *Cynon Valley Borough Council v SoS for Wales* 1986 53 P. & C.R.
9	Report of *Crawley Borough Council v Hickmet Limited* 1997 75 P. & C.R.
10	Case digest of *Koumis v SSCLG and Enfield LBC* 2015
11	Case digest of *Britannia Assets (UK) Ltd v SSCLG* 2011
12	Colour copies of photographs annotated Appendices 8 & 9 to Robert Allan Supplementary Proof of Evidence
13	Fell Reynolds, Chartered Surveyor's report of Norton's Garage dated 29 April 2002
14	Policy BE4 of the Shepway District Local Plan Review, adopted 16 March 2006
15	Copy Licence agreement to Mr Terence Peters commencing 23 March 2011
16	Closing submissions for the Council
17	Closing submissions for Terence Peters (Appellant B)
18	Closing submissions for Graham & Andrew Checksfield (Appellants A & C)

The Planning Inspectorate

Plan

This is the plan referred to in my decision dated: 14 March 2022

by K R Saward Solicitor

Land Adjoining 76-78 High Street, Dymchurch, Kent

References: APP/L2250/C/19/3221881, APP/L2250/C/19/3221765, APP/L2250/C/19/3222221, APP/L2250/C/19/3221711

Scale: **DO NOT SCALE**