Case Name: South Darenth Farms and Cold Store Company Ltd v Secretary of State for Housing, Communities and Local Government & Ors

Full case: South Darenth Farms and Cold Store Company Ltd v Secretary of State for Housing, Communities and Local Government & Ors [2025] EWHC 2646 (Admin) (16 October 2025)

Commentary:

Background

This was an unsuccessful statutory appeal pursuant to the provisions of section 289 of the Town and Country Planning Act 1990 (TCPA 1990) bought by South Darenth Farms and Cold Store Company Limited ("South Darenth"), the lessee of a portion of the Hawkspare Site in Dartford. In August 2024, Dartford Borough Council issued an enforcement notice alleging that the site had undergone a material change of use to a mixed use without planning permission, alongside associated operational development that “facilitated” that change of use.

The enforcement notice required South Darenth to cease all elements of the mixed use and to remove physical works including a retaining wall, fencing, and the main entrance gate, all said to facilitate the unauthorised use.

South Darenth appealed to the Secretary of State under section 174(2)(a), (b), (c), (d), (f), and (g) TCPA 1990. The Inspector appointed by the Secretary of State dismissed the appeal (save for minor modification) on 6 May 2025.

The principal issue concerned s.174(2)(c) and whether the fences and retaining walls were lawful because they constituted permitted development under Class A, Part 2, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). South Darenth argued that the fencing and gates were permitted development under Class A and Article 3(5) of the GPDO did not apply, because Class A relates to operational development, not use, and therefore the Inspector had erred in concluding that the unlawfulness of the site’s use precluded reliance on permitted development rights. The Inspector, however, held at paragraphs 42 and 46 of his decision that, because the use of the land was unlawful, Article 3(5) prevented reliance on GPDO rights for the fencing and walls. Consequently, he upheld the enforcement notice.

South Darenth sought permission to appeal to the High Court under section 289 TCPA 1990, alleging legal error in the Inspector’s reasoning. The basis of South Darenth's application is that the fencing and gates were within Class A, Part 2, Schedule 2 to the GPDO and that this Class is not related to either a building or use and so article 3(5) of the GPDO can have no application. The GPDO’s Article 3(5) applies only where

permission is “granted in connection with an existing use”; Class A development is independent of use and therefore unaffected. The misapplication of Article 3(5) was material to the outcome.

The Secretary of State accepts the Inspector had erred on Article 3(5), but argues the error was immaterial. Even without that mistake, the Inspector would have upheld the notice, because the walls and fences were integral to the unlawful mixed use and enforceable under the Murfitt principle. Reliance was placed on Simplex GE (Holdings) Ltd v Secretary of State for the Environment [2017] PTSR 1041 – an appellate court should not grant permission where the outcome would necessarily have been the same. The Secretary of State argued that the fences, walls and gate were expressly described in the enforcement notice as “facilitating” the unauthorised mixed use and there was no evidence they served a lawful purpose or could be used independently of the unlawful use.

South Darenth contended that the Inspector never expressly found the walls and fences were integral to the unlawful use and his decision turned entirely on the erroneous application of Article 3(5). The court rejected this argument. It held that although the Inspector did not explicitly state the works were “part and parcel” of the unauthorised use, this conclusion was inevitable on the evidence and the wording of the enforcement notice. The notice and decision repeatedly described the structures as facilitating the unlawful use. There was no evidence from South Darenth suggesting any independent or lawful purpose for the walls and fences. Thus, had the Inspector considered the issue correctly, he would have found the Murfitt principle applied.

South Darenth also relied on Duguid v Secretary of State for the Environment (2001) 82 P&CR 6 and Staffordshire CC v Challinor [2008] 1 P&CR 10, which held that enforcement notices cannot lawfully remove permitted development rights. However, the court distinguished that case as it concerned the principle that an enforcement notice cannot override lawful, freestanding GPDO rights whereas this case involved operational development integral to an unlawful use. The court found that the Murfitt principle may apply even where the associated works benefit from GPDO rights, provided the works are integral to or part and parcel of the unlawful use and the existence of permitted development rights does not place such works in a “special category” immune from enforcement where they support an unauthorised use.

The court applied the Simplex line of authority, on the basis that the Inspector would have reached the same outcome regardless of the misinterpretation of Article 3(5) and the application for permission to appeal was refused.

Case summary prepared by Amy Fender