



Appeal Decisions

Inquiry held on 25 November 2009

Site visit made on 25 November 2009

by **P N Jarratt** BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State
for Communities and Local Government

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
✉ enquiries@pins.gov.uk

Decision date:
22 December 2009

Appeal A - Appeal Ref: APP/C3430/C/09/2102272

The land and premises at, 2 Lane Green Road, Bilbrook, Staffordshire, WV8 2JS

- 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 Terence John Clowsley against an enforcement notice issued by South Staffordshire Council.
- The Council's reference is TCP3/1243.
- The notice was issued on 24 February 2009.
- The breach of planning control as alleged in the notice is the erection of a metal clad enclosure in the position indicated edged blue on the attached plan without planning permission.
- The requirements of the notice are to demolish the metal clad enclosure erected in the position indicated edged blue on the plan and to remove all materials arising from the demolition works from the land.
- The period for compliance with the requirements is two months.
- The appeal is proceeding on the grounds set out in section 174(2) (c) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.
- **Summary of decision** – the appeal is dismissed and the enforcement notice upheld.

Appeal B - Appeal Ref: APP/C3430/X/09/2101795

2 Lane Green Road, Codsall, Wolverhampton, Staffordshire WV8 2JS

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr Terence John Clowsley against the decision of South Staffordshire Council.
- The application Ref 09/00053/LUP, dated 26 January 2009, was refused by notice dated 23 March 2009.
- The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
- The use for which a certificate of lawful use or development is sought is the sale of farm produce from trailer situated at front of site.
- **Summary of decision** – the appeal is dismissed

Application for costs

1. An application for costs was made by the Council against the appellant. This application is the subject of a separate Decision.

Preliminary matters

2. All evidence at the inquiry was given on oath.
3. In appeal A, Paragraph 4 (f) of the enforcement notice refers to the Town and Country Planning (General Permitted Development) Order 1955. This should refer to the 1995 Order as amended. Additionally the phrase 'the development is not an established' is meaningless. Both parties agreed that there would be no injustice if the notice is corrected to refer to the 1995 Order and the last phrase deleted. I have therefore corrected the notice accordingly.
4. In Appeal B, the Council has determined the application under s192 whereas the appellant states that the application was made under s191. However the original application lacked clarity as it made reference to both existing and proposed uses. In view of the application details and the supporting documents the Council considered that the application related to establishing whether a mobile trailer for the sale of produce from the land and otherwise, could be stationed lawfully at the front of the site. This was accepted by the appellant at the inquiry and I have therefore determined the appeal on the basis of the use for which a certificate of lawful use or development is sought is the sale of farm produce from a trailer situated at the front of the site.
5. No site notice has been posted at the site. The appellant claims that he did not receive one from the Inspectorate although my information indicates one was sent to the appellant on 25 September. Notwithstanding the absence of a site notice I am satisfied that all those who may have had an interest in the appeals would have been aware of the inquiry from the publicity undertaken by the Council.
6. As both appeals relate to matters of fact, the planning merits do not fall to be considered.

The Appeal Sites

7. 2 Lane Green Road is a semi-detached hipped roof bungalow that has been extended at the side in the past. The curtilage of the dwelling is within the built up frontage of residential development on Lane Green Road. There is an access drive that leads to the rear of the property and a small area of front garden that has been covered in hardcore. The proposed siting of the trailer for the sale of farm produce and the subject of (Appeal B) is within the front garden.
8. To the rear of the dwelling is a roughly triangular plot of land of about a hectare. On its northern boundary the plot adjoins the rear gardens of dwellings on Lane Green Avenue. The site of the metal clad enclosure the subject of the enforcement notice (Appeal A) is close to the rear gardens of 2-4 Lane Green Avenue. The structure has either been demolished or has collapsed. Sections of the structure were lying on the ground at the time of my site inspection.
9. The remainder of the land has been divided by fencing to create different enclosures and there are a number of dilapidated structures and polytunnels. There is a chicken coop which, according to the appellant, houses 6 hens and a paddock with a Shetland pony and a donkey. There is also a mobile home sited

relatively close to the dwelling. There is no distinct boundary between the rear of the dwelling and the larger area of land.

Appeal A: APP/C3430/C/09/2102272 - appeal under ground (c)

10. This ground of appeal is that there has not been a breach of planning control. The appellant states that the enclosure is not operational development as it is not permanent and not attached to the ground. He further claims that as it located within a garden in the Green Belt it attracts 50% development rights.
11. The key elements in determining whether something is a building are size, permanence and physical attachment¹. Whether or not the enclosure was physically attached to the land is not determinative on its own². When in place, the enclosure had been of substantial size, it had been erected on-site and was not capable of being moved around. It was on the site for over 18 months. I am satisfied that the erection of the enclosure was a building operation in terms of section 55 of the Act requiring planning permission.
12. Turning to the question of permitted development rights under the Town and Country Planning (General Permitted Development) Order 1995 as amended (the GPDO), there are different provisions depending on the lawful use of the site.
13. The Council considers that the last lawful use of the land subject to Appeal A was agricultural and from my site inspection there was clear evidence of past agricultural activity as some sort of smallholding. This also was confirmed by the appellant's evidence on the site's history and from a recent appeal decision³. Part 6 of the GPDO relates to agricultural buildings and operations but as the site is less than 5 hectares there are no rights to erect an agricultural building.
14. The Council consider that there are two planning units; one with residential use at the front and one with agricultural use at the rear. I agree with this view. Although there is a single unit of occupation there are two distinct areas each occupied for substantially different purposes. Notwithstanding this the planning unit should not be confused with the definition of curtilage. To fall within the curtilage of a building, it is enough that the land serves the purpose of the building in some reasonably necessary or useful manner even though it may not be marked off or enclosed in any way.
15. The appellant claims that the land is within the curtilage of a dwelling house in which case Part E of Part 1 to Schedule 2 of the GPDO applies. However Part E covers any building or enclosure required for a purpose incidental to the enjoyment of the dwellinghouse. Despite the Council's efforts prior to the inquiry to establish from the appellant the purpose of the enclosure (Document 3), it was only at the inquiry that the appellant stated it was used as a carport and for the parking of a JCB for use on agricultural land and a refrigeration van in connection with the agricultural land. In view of these uses and due to the size of the structure which was capable of accommodating up to three vehicles

¹ Barvis Ltd v SSE [1971] 22P & CR710

² Cheshire CC v Woodward [1962] 2 WLR 636

³ APP/C3430/A/06/2006001

I conclude that it was not primarily required for a purpose incidental to the enjoyment of the dwellinghouse.

16. The appellant relies on a substantial number of documents to explain the history and ownership of the land and premises. He considers that the dwelling and the land at the rear should be considered as being within a single residential curtilage. However he takes an inconsistent view in arguing that the front 'garden' should be considered as part of an agricultural holding for the purposes of Appeal B. The appellant's evidence in support of the residential curtilage extending to the rear to include the site of the metal clad enclosure was the existence of a shed used for domestic rather than agricultural purposes. However, the evidence of local residents contradicts this.

17. The burden of proof rests with the appellant to show that, on the balance of probability, the metal clad enclosure is within the curtilage of a dwellinghouse and that it is required for a purpose incidental to the enjoyment of the dwellinghouse. This has not been done in either case.

Conclusion

18. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections.

Appeal B: APP/C3430/X/09/2101795

19. The appellant claims that there is an established use of land for farm gate sales with 45% of sales being products not produced on the site.

20. One of the appellant's witnesses recalls that in the 1980's he noticed potatoes, peas and other produce being sold at the front of the site but that there were no signs to indicate the presence of a farm shop. Another witness recalls that as a child, up to 1972, he went with his father to buy wholesale produce for his father's own shop on the Cannock Road. He stated that there was a shed at the rear where the purchases would be made but that there was no till. It was only busy at Christmas when walnuts were sold. The appellant states that the farm shop was a green shed he demolished in 2003/04. It did not contain any paraphernalia normally associated with a farm shop, but it contained books and garden tools. He had relied on a discussion with the previous owner regarding sales having taken place from the premises.

21. Two long standing local residents said that eggs were sold at the back door of the cottage and that there had never been a farm shop. It was suggested that the location of the green shed where produce was sold was at nearby Eastwood House and not at the appeal site. Fuchsia plants had at some time been sold at the side of the bungalow but this was on land that now forms part of 1A Lane Green Road.

22. There is conflicting evidence regarding the extent to which produce may have been sold from the front of the premises at some stage in its history. Similarly there is doubt over the sales of produce from a shed at the rear. The evidence from the appellant's two witnesses does not show that farm sales were a significant and regular activity either at the front or rear of the dwelling. I accept that occasional sales may have occurred in the past but I am not

convinced about the extent, continuity and location of those sales. I note also that the appellant had an appeal dismissed in 2005⁴ for the change of use of the dwelling to a farm shop but the Council say that at no time did the appellant contend that he had an established use of farm sales.

23. The sale of 45% of products not produced on site well exceeds what would normally be regarded as de minimus⁵ either in terms of sales from a farm holding or from a dwelling. For the reasons explained in paragraph 14 above the proposed location of the trailer is within the curtilage of a dwellinghouse and from a separate planning unit to the agricultural activity at the rear. However, even had I concluded that there was a single planning unit, the submitted evidence would not have supported the appellant's case.

24. I do not find on the balance of probability the appellant's evidence to be supportive of a continuous use of farm sales for 10 years (whether or not including 45% of imported produce). The proposed use therefore would represent a material change of use from residential to a mixed use of residential and retail.

Conclusion

25. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the sale of farm produce from trailer situated at the front of the site was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Decisions

Appeal A: APP/C3430/C/09/2102272

26. I direct that the enforcement notice be corrected by the substitution of "Town and Country Planning (General Permitted Development) Order 1995 as amended" for "Town and Country Planning (General Permitted Development) Order 1955, the development is not an established" in paragraph 4 (f) of the Notice. Subject to this correction, I dismiss the appeal and uphold the enforcement notice.

Appeal B: APP/C3430/X/09/2101795

27. The appeal is dismissed.

P N Jarratt

Inspector

⁴ APP/C3430/A/05/1177039

⁵ Allen v SSE & Reigate and Banstead BC [1990] JPL340

APPEARANCES

**FOR THE LOCAL PLANNING AUTHORITY: David Pattison, Head of Legal Services,
South Staffordshire Council**

He called

**Ms Lucy Macdonald Principal Enforcement Officer
MRTPI
Mrs Valerie Davies BSc Principal Planning Officer
DipTP MRTPI**

FOR THE APPELLANT: Mr T Clowsley (the appellant)

He called

**Mr K Clowsley
Mr A Ellwell**

INTERESTED PERSONS:

**Mr J Hannabuss, local resident
Mrs Pearl Scott, local resident
Mrs V Campbell, local resident**

DOCUMENTS

- 1 Extract from conveyance (Appellant)**
- 2 LDC 09/00079/LUP (Appellant)**
- 3 Letter dated 22 September 2008 from the Council to Mr Clowsley
(LPA)**
- 4 Letter dated 23 March 2009 from the Council to Mr Clowsley (LPA)**
- 5 A Farmer's Guide to the Planning System (LPA)**