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# Appeal Decision

Hearing held on 13 September 2022

Site visit made on 13 September 2022

**by M Savage BSc (Hons) MCD MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 19 October 2022**

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## **Appeal Ref: APP/C3430/C/21/3272811**

### **Land at Saredon Road, Cheslyn Hay, Walsall WS6 7JD**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended (the Act). The appeal is made by Mr Peter Wilkes against an enforcement notice issued by South Staffordshire District Council.
  - The notice was issued on 5 March 2021.
  - The breach of planning control as alleged in the notice is without planning permission, the making of a material change of use of Land, to Land used as a Sawmill and for storage purposes including open outdoor storage, and unauthorised operational development to facilitate the material change of use consisting of the erection of a structure using container units to support a roof canopy and the erection of lighting columns x2 on the Land outlined in red for identification purposes on the plan attached to this Notice.
  - The requirements of the notice are to:
    - i) Except as provided for by planning permission reference 19/00604/FUL, (upheld by appeal reference APP/C3430/W/20/3252430 by way of the Planning Inspector's decision dated 3rd November 2020), cease the use of the Land outlined in red on the attached plan, as a Sawmill and for storage purposes including all open outdoor storage.
    - ii) Except as provided for by planning permission reference 19/00604/FUL, (upheld by appeal reference APP/C3430/W/20/3252430 by way of the Planning Inspector's decision dated 3rd November 2020) remove all container units, the roof canopy and associated structures, lighting columns x2, wood, materials and machinery from the Land.
  - The period for compliance with the requirements is: 12 months.
  - The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended.
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## **Decision**

1. It is directed that the enforcement notice is corrected by, at section 5:

- Delete requirement 5i and insert 'Except as provided for by planning permission granted on appeal, reference APP/C3430/W/20/3252430 dated 3rd November 2020, cease the use of the Land outlined in red on the attached plan, as a Sawmill and for storage purposes including all open outdoor storage.'
- Delete requirement 5ii and insert 'Except as provided for by planning permission granted on appeal, reference APP/C3430/W/20/3252430 dated 3rd November 2020, remove all container units, the roof canopy and associated structures, lighting columns x2, wood, materials and machinery from the Land.'

2. Subject to the corrections above, the appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the material change of use of Land, to Land used as a Sawmill and for storage purposes including open outdoor storage, and operational development to facilitate the material change of use consisting of the erection of a structure using container units to support a roof canopy and the erection of lighting columns x2 on the Land at Saredon Road, Cheslyn Hay, Walsall WS6 7JD subject to the conditions set out in Appendix 1 attached to this decision.

### **Preliminary Matters**

3. The appellant initially appealed on grounds (a), (c), (d), (f) and (g) and requested the appeal proceed by way of Inquiry. However, the appellant has since withdrawn grounds (c), (d) and (f) and has agreed to the hearing procedure. I am satisfied, on the basis of the evidence before me, that it is not necessary to test the evidence under oath and therefore the hearing procedure is appropriate in this case.
4. The appellant states in their final comments that the appendices detailed on pages 23 and 24 have not been received. However, the appellant confirmed during the hearing that they have now seen all the documentation submitted.

#### *Status of planning permission granted on appeal*

5. Planning permission was granted, on appeal, reference APP/C3430/W/20/3252430 dated 3 November 2020, for replacement structure and erection of lighting columns at the site, subject to conditions. Although the parties initially suggested the permission has not been implemented and therefore the conditions cannot be enforced, it was accepted during the hearing that the permission was retrospective in part and therefore, whilst the approved building has not been constructed, planning permission had effect from the date on which the development was carried out.
6. The implications of this were discussed during the hearing at length, in particular whether the permission inadvertently granted an unfettered permission for the use of the site. The permission clearly relates to operational development, which by virtue of section 75(3) of the Act which sets out that if no purpose (of a building) is so specified, the permission shall be construed as including permission to use the building for the purpose for which it is designed. Although the building has not been constructed, it would be possible for the appellant to construct it and use it for its intended purpose.
7. However, the planning permission requires the building is removed. A use cannot survive the destruction of buildings and installations necessary for it to be carried on. The appellant suggested it would be possible to use an 'industrial tent' which would need to be of a similar size to the approved building to accommodate the machinery. Whether such a structure would be development for the purposes of the Act would be a matter of fact and degree. Having regard to the evidence before me and my inspection of the site, I consider it highly likely such a structure, in this case, would be a building given its size, permanence and the likely need to fix it to the ground. Consequently, the permission did not grant an unfettered permission for the use of the site.

### *Validity of the notice*

8. The appellant suggests there are inadequacies with the notice, such that it is a nullity. The appellant raises concern regarding the Council's wording of the requirements as they refer to planning permission reference 19/00604/FUL (upheld by appeal reference APP/C3430/W/20/3252430 by way of the Planning Inspector's decision dated 3<sup>rd</sup> November 2020). However, I consider the wording can be corrected to refer to the planning permission granted on appeal, without injustice to either party as it would not change the substance of the requirements.
9. The requirements require the cessation of the use and the removal of various items and structures without fettering the use of the site in accordance with the above planning permission. It is not necessary for a notice to specify every item that is required to be removed, rather the use of overarching terms, such as 'structures', 'materials' and 'machinery' is sufficient. Having reviewed the evidence and seen the site, I consider the requirements are sufficiently clear such that the appellant knows what they are required to do.
10. The breach only refers to two lighting columns and whilst it is not specified which lighting columns would need to be removed, the removal of two lighting columns would ensure compliance with the notice. Since the removal of the lighting columns is required by the above planning permission by virtue of condition 2, there is a mechanism to ensure removal of any remaining lighting columns.
11. The appellant raises further concerns regarding the requirements which are essentially that the steps required by the notice to be taken exceed what is necessary to remedy the breach. These are matters which should properly be addressed under ground (f), which I shall consider should the appeal under ground (a) fail.

### **Ground (a)**

#### **Main Issues**

12. The appeal under ground (a) is made on the basis that, in respect of the breach of planning control constituted by the matters stated in the notice, planning permission ought to be granted.
13. The main issues of the appeal are:
  - Whether the scheme would prejudice the purpose of land safeguarded for longer term development needs; and
  - The effect of the appeal scheme on the character and appearance of the area; and
  - The effect of the appeal scheme on the living conditions of nearby occupants, with regard to noise and disturbance and lighting.

#### **Reasons**

##### *Safeguarded Land*

14. The appeal site comprises a site which is safeguarded for longer term development needs under policy SAD3 of the Site Allocations Document (SAD)

(2018). Policy GB2 of the South Staffordshire Local Plan Core Strategy DPD (CS)(2012) and policy SAD3 of the SAD say 'all safeguarded land identified for longer term development needs and removed from the Green Belt (including existing Safeguarded Land) will retain its safeguarded land designation until a review of the Local Plan proposes development of those areas in whole or part. Planning applications for permanent development prior to allocation in the Local Plan will be regarded as departures from the Plan'.

15. Planning permission was granted on appeal, reference APP/C3430/W/20/3252430, at the site for replacement structure and erection of lighting columns at the appeal site. The previous Inspector accepted that temporary development on the Land is acceptable in principle and included a condition requiring that the building and structures are removed from the application site not later than the expiration of 2 years from the date of the decision. With respect to the application of policies GB2 and SAD3, I see no reason to take a different view in this case.
16. The Council confirmed during the hearing it considers the review of the local plan is unlikely to be adopted until winter 2023 and that it no longer objects to the temporary use of the site, subject to the imposition of a condition to require the development is removed within 2 years of the date of any permission. Given the date of this decision and the time it is likely for the local plan to be adopted, which the appellant suggested is likely to be ambitious, I agree that any conflict with policies GB2 of the CS and SAD3 of the SAD would be addressed by limiting the duration of the permission via condition.

#### *Character and appearance of the area*

17. The appeal site comprises a parcel of land which is set well back from Saredon Road, on the outskirts of Cheslyn Hay. The appeal site is bound by fields on one side and a site which was being developed for housing at the time of my visit on the other side. The appeal site is therefore located in an area with a transitional, edge of settlement character.
18. The buildings, materials and machinery can be seen from Saredon Road through gaps in mature hedgerows. Although there are industrial units to the north, and a quarry to the north east of the site, these are separated from the appeal site by mature vegetation and, given their distance from the highway, do not inform the character of this part of Saredon Road.
19. The previous Inspector concluded that the *proposed structure* (my emphasis), due to its location in a dip, located away from the highway and its open sides and simple form, would reflect the design of an agricultural barn, and so would be in keeping with its semi-rural context. However, this appeal concerns the existing structures within the site and the use of the site, not the building which was proposed as part of the previous appeal.
20. The current structure, which would be retained in the event I grant planning permission under ground (a), appears makeshift in appearance. The open storage of materials, including wood and machinery, gives the site a cluttered appearance, which neither complements the rural character to the east of the site, or the residential character to the south. Consequently, I consider the appeal scheme causes moderate harm to the character and appearance of the area.

21. However, as set out above, the inclusion of a condition requiring the removal of the various structures and paraphernalia associated with the appeal scheme would limit the duration that the structures and materials are *in situ*. In the event that I uphold the notice, the appellant would have 12 months to comply with the requirements. Were I to impose the condition outlined above, any effect on the character and appearance of the area would be temporary, limited to 2 years. I consider this would significantly limit the harm to the character and appearance of the area.
22. The site has a number of employees and therefore makes an important contribution to the local economy. Granting planning permission for a temporary period would give the appellant sufficient opportunity to relocate, thereby ensuring the continuation of this economic benefit, whilst ensuring the character and appearance of the area is not harmed in the longer term. The benefits of allowing the appeal for a temporary period, in my view, outweigh the very limited harm arising to the character and appearance of the area.
23. Subject to the imposition of a condition limiting the duration of the development, there would be no significant harm to the character and appearance of the area and no conflict with policy EQ4 of the CS, which seeks to ensure that development does not have a detrimental effect on the immediate environment and on any important medium and long distance view and policy EQ11 of the CS, which seeks to ensure proposals respect local character and distinctiveness.

#### *Living conditions*

24. As set out above, the appeal site is adjacent to a housing development. Although houses closest to the site were still in the process of being constructed at the time of my site visit, given their advanced stage of construction, I consider it likely that the dwellings would be occupied within a matter of months. Policy EQ9 of the CS seeks to protect residential amenity by directing development likely to be harmful to amenity away from sensitive locations.
25. Although the sawmill was not operational during my visit, this type of activity has the potential to generate noise, which occupants of nearby dwellings may find intrusive. A noise assessment carried out in support of the adjacent residential development concluded that, subject to mitigation, the site is suitable for dwellings. The assessment included consideration of the activities carried out at the appeal site and I have no reason to doubt its conclusion in this regard.
26. However, the assessment of the sawmill was limited to the daytime. Operation of the site outside of the hours modelled in the assessment, particularly at night time, when background noise levels are likely to be lower, could cause noise and disturbance as a result of the operation of machinery and deliveries to and from the site. It would therefore be necessary to impose conditions to restrict the hours of operation of machinery and the movement of delivery vehicles.
27. Since the enforcement notice was issued, the appellant has altered the lighting at the site to accord with a scheme contained within a planning obligation, which has been submitted in support of this appeal. The day before the hearing, just before 9pm, I was able to view the site and associated lighting in

use. I saw that, given the location of the lighting away from housing being constructed, the housing itself was not illuminated. As a consequence, I consider it highly unlikely that future occupants of the dwellings would be adversely affected by the existing lighting.

28. Paragraph 55 of the National Planning Policy Framework (2021)(the Framework) advises that planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition. I raised with the parties whether a lighting scheme could be secured by condition. The Council advised that it wants to remove the ability of the appellant to implement the approved lighting scheme, which it would be unable to do via condition.
29. The scheme ensures that lighting is located away from nearby residential properties and is directed into the site so as to minimise light spill outside of the site. Without such a scheme, lighting has the potential to harm the living conditions of occupants of nearby dwellings. Although there is a lighting scheme which has deemed approval, the planning obligation would ensure that there is no uncertainty as to which scheme is permitted and will ensure that the lighting columns are removed following cessation of the use. I therefore agree that the obligation is necessary in this instance and meets the tests set out in paragraph 57 of the Framework.
30. Thus, subject to conditions and the obligation referred to above, I find that there would be no harm to living conditions arising from the appeal scheme and no conflict with policy EQ9 of the CS, the requirements of which are set out above.

### **Other Matters**

31. An interested party raised concern regarding the effect of vehicle movements on living conditions and highway safety during the hearing and suggested that vehicles are routed to avoid travelling through Cheslyn Hay. However, while the appellant would have control over his own vehicles, he would not have control over vehicles of third parties.
32. Although the Council suggested there is sufficient information to attach such a condition, I am not persuaded this is the case. I have no routing plan before me and whilst it would seem simple to require vehicles to turn right at the junction with the highway onto Saredon Road, the land is outside the appeal site and outside the appellant's control.
33. I saw that there is a school and leisure centre near the site and note that vehicles travelling through Cheslyn Hay will pass a number of residential properties. However, there is no substantive evidence before me to show that living conditions or highway safety are harmed as a result of vehicle movements to and from the appeal site and I note the Inspector in respect of APP/C3430/W/20/3252430 drew a similar conclusion in this regard.

### **Conditions**

34. As set out above, I have found that planning permission should be granted for a temporary period only. It is therefore necessary to include a condition limiting the duration of the permission and requiring the structures and stored items are removed.

35. To protect the living conditions of the occupants of nearby dwellings, I shall impose conditions to control the hours of operation of machinery, to control deliveries to and from the site, to prevent burning of materials of the site and to restrict the use of the site to a sawmill. It was agreed during the hearing that the wording used in conditions attached to the previous appeal decision would be appropriate, save to refer to the entire site and not just the building.

### **Conclusion**

36. The imposition of a condition limiting the duration of the development would ensure the land is available for longer term development needs and would significantly limit any harm to the character and appearance of the area. The economic benefits of allowing the sawmill to continue and giving the appellant sufficient opportunity to secure an alternative site would outweigh the limited remaining harm to the character and appearance of the area.

37. For the reasons given above, I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the development as described in the notice as corrected. The appeal on ground (g) does not therefore fall to be considered.

*M Savage*

INSPECTOR

## **APPEARANCES**

### FOR THE APPELLANT:

|                   |   |
|-------------------|---|
| Thea Osmund Smith | Barrister instructed by Suzanne Tucker              |
| Suzanne Tucker    | Associate Solicitor at FBB Manby Bowdler Solicitors |
| Mandy Seedhouse   | Planning Witness                                    |
| Mr Wilkes         | Appellant   |

### FOR THE LOCAL PLANNING AUTHORITY:

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| Philip Robson        | Barrister instructed by solicitor to the Council |
| Jennifer Mincher     | Senior Planning Officer                          |
| Catherine Gutteridge | Planning Enforcement Team Manager                |

### INTERESTED PARTIES:

Councillor Boyle

|               |              |
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| Melanie Brown | Parish Clerk |
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## **DOCUMENTS SUBMITTED AT THE HEARING**

1. Letter of notification of the Hearing
2. Pages 61-63, 75-77, 92-93 and 97-99 of the South Staffordshire Local Plan Core Strategy DPD (Adopted December 2012)
3. Policy SAD3 of the Site Allocations Document (SAD) September 2018
4. Policy SAD2 of the Site Allocations Document (SAD) September 2018
5. Proposed wording for a time limited condition, submitted by the Council



## **APPENDIX 1: CONDITIONS**

1. The use hereby permitted shall be for a limited period being the period of 2 years from the date of this decision. All buildings and structures hereby permitted, as shown on drawing number 18/1111/105 Existing Site Layout, Floor Plans and Elevations, dated May 2019 and any associated storage, structures and stored items in connection with the use of the land as a sawmill shall in their entirety be taken down and removed from the site not later than the expiration of 2 years from the date of this decision.
2. Machinery shall be operated from within the development hereby permitted only between the hours of 0800 to 1700 on Mondays to Fridays, 0900 to 1300 on Saturdays and not at any time on Sundays or on Bank or Public Holidays.
3. Deliveries shall be taken at or despatched from the site only between the hours of 0800 to 1700 on Mondays to Fridays, 0900 to 1300 on Saturdays and not at any time on Sundays or on Bank or Public Holidays.
4. There shall be no open burning of any materials on the site.
5. The development hereby permitted shall not be used for any other purpose falling within Use Class B2 of the Town and Country Planning (Use Classes) Order 1987 (as amended) apart from as a sawmill with ancillary office.

**End of Appendix 1**