



Appeal Decision

Site visit made on 26 April 2021

by Thomas Shields DipURP MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 December 2021

Appeal Ref: APP/C3430/C/20/3264074

Former Munitions Depot, Lawn Lane, Coven, Wolverhampton WV9 5BA

- 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 Act").
- The appeal is made by Telford 6 Limited against an enforcement notice issued by the South Staffordshire District Council.
- The enforcement notice was issued on 22 October 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 for storage purposes including the parking and storage of commercial vehicles, commercial trailers including commercial box trailers, curtain side trailers and porta cabins together with waste materials on the Land outlined in red for identification purposes on the plan attached to this Notice
- The requirements of the notice are:
 - i) Permanently cease the use of the Land outlined in red on the attached plan, for storage purposes including the parking and storage of commercial vehicles, commercial trailers including commercial box trailers, curtain side trailers and porta cabins together with waste materials.
 - ii) To ensure the cessation of the unauthorised use of the Land outlined in red on the attached plan, permanently remove all commercial vehicles, commercial trailers including commercial box trailers, curtain side trailers and porta cabins together with waste materials from the Land.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(c),(d),(e),(f) and (g) of the Act.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with corrections in the terms set out below in the Formal Decision.

Application for Costs

1. An application for costs was made by the South Staffordshire District Council against Telford 6 Limited. The application is subject of a separate Decision.

Appeal site

2. The location of the appeal site is identified by the red line on the plan attached to the enforcement notice. The site in the notice is referred to as Goodacre Farm, Lawn Lane, Coven, which differs from that on the submitted appeal form which I have used in the banner heading above. However, the use of different addresses has not resulted in any confusion between the parties as to the land affected by the notice.
3. The appeal site lies within the countryside and the Green Belt, having a single access from the western side of Lawn Lane. During my visit to the appeal site I saw that the main concrete internal access road into the site runs along the

southern boundary towards the south-west corner, there being the site of a former World War II Heavy Anti-Aircraft emplacement. There were also other areas of hardstanding, a number of lorry trailers and storage units, a security office, a dilapidated timber building containing piles of worn tyres, and old uninhabited caravans. There was a large spoil mound present and the central area of the site appeared to have been cleared and levelled. Parts of the northern area of the site appeared to be overgrown field with some shrubbery. There also appeared to be some young saplings planted towards the north eastern part of the site. There was no obvious physical or functional separation of the site internally and the whole of the site was enclosed by a combination of mature trees, hedgerow and fencing.

Background

4. An appeal¹ against the refusal of a certificate of lawful use or development² (LDC) relating to the appeal site was dismissed by my colleague Inspector on 9 October 2020. While all of the evidence submitted to that appeal Inquiry is not before me, both parties have referred to the appeal Decision letter (hereafter "LDC DL"). The single primary use of the site claimed to exist for at least 10 years, and upon which the LDC appeal turned, was "*storage of materials and goods, also the parking of transport and wagons*" (LDC DL 17). Importantly, it should be noted that while that described use may be similar in some respects to the use alleged in the enforcement notice in this appeal, they are not the same.

The Enforcement Notice – whether nullity or invalid

5. The reasons for issuing the notice³ include an unfinished paragraph rendering it incomprehensible. The intended full paragraph is set out in the Council's SOC⁴ which makes a comparison between historical uses and agricultural use in terms of their relative impact upon the openness of the Green Belt. Correcting the notice by deleting the unfinished paragraph would not result in injustice to either party since by itself it makes no sense, and the Council's objections and policies with regard to the Green Belt are clearly set out elsewhere in the notice reasons. Furthermore, the appeal was made on legal grounds only and the effect on the openness of the Green Belt is not relevant to these grounds of appeal. I will therefore correct the notice by deleting the unfinished paragraph using powers available to me under s176(1)(a) of the Act.
6. With regard to the alleged breach of planning control and the requirements in the notice, the appellant considers they are unclear because the previous use of the land is not stated, thereby it is argued rendering the notice either a nullity, or invalid and incapable of correction without resulting in injustice. In support he refers to another appeal Decision⁵ and case law in *Oates v SoCLG and Canterbury* [2017] EWHC 2716⁶, and *Miller Mead v MHLG* [1963] 1 A11 ER 459.
7. An enforcement notice will be a nullity if it omits to clearly state the matters constituting the breach of planning control and the requirements (remedial

¹ APP/C3430/X/20/3248280

² Council Ref 19/00897/LUE, refused 8 April 2020

³ Enforcement notice - Section 4 paragraph 7

⁴ Statement of Case – paragraph 2.7

⁵ APP/W1145/C/19/3241008 – appeal against an enforcement notice, Beaworthy, Devon

⁶ Later appealed and dismissed in *Oates v SSCLG* [2018] EWCA civ 2229

- steps to be taken), as required by s173 of the Act. It must also tell a recipient with 'reasonable certainty' what the breach of planning control is and what must be done to remedy it, as established in *Miller-Mead* and *Oates*.
8. Contrary to the appellant's view, and as established by the Courts⁷ it is unnecessary for the notice allegation to state the previous land use.
 9. With regard to the alleged new use, no appeal on ground (b), that it had not occurred, was made. However, some of the appellant's submissions more properly fall to be considered under this ground. In particular, the submissions (from both parties) indicate that at the date the notice was issued there was some agricultural use of the site such that there was a mixed use. This was not inconsistent with what I saw during my visit to the appeal site. In response to my raising this matter with the parties⁸ both agreed that the alleged breach could be corrected to allege a mixed use with agriculture without injustice. I will therefore correct the notice accordingly.
 10. With regard to the notice requirements I find, for the reasons set out later under the ground (f) appeal, that they are clearly expressed and properly relate to the alleged breach of planning control.
 11. As such, the alleged breach (as corrected) and remedial steps to be taken are clearly set out, satisfying the statutory requirements of s173 of the Act. Consequently, in respect of these matters I find that the notice, as corrected, is neither a nullity, nor invalid and incapable of correction without injustice.
 12. Both parties refer to permitted development (PD) rights under Class R of the GPDO⁹. I deal with these matters later.

Appeal on ground (e)

13. This ground of appeal is that copies of the enforcement notice were not served as required by s172 of the Act. The key issue is whether the notice was properly served on the owners and occupiers of the land to which it relates, and on any other persons having an interest in the land, being an interest which, in the opinion of the authority, is materially affected by the notice. It is for the Council to decide who is materially affected, but it runs the risk of an enforcement notice being quashed if it exercises its discretion wrongly.
14. Brownshore Management Limited (BM) is the planning agent acting on behalf of the appellant land owner Telford 6 Limited (T6L). BM claim that they should have been served with a copy of the notice.
15. I understand that one of BM's directors is also a director of T6L. However, there is no claim that T6L, as land owner, were not properly served. Moreover, there is no evidence before me to establish that BM, as a company, have any legal interest in the land affected by the notice.
16. Furthermore, s176(5) of the Act provides me with the power to disregard any failure to serve the notice on anyone, as required, if that person has not been substantially prejudiced by the failure. Thus, even if BM had an interest in the land, they cannot have been prejudiced given that they have lodged the appeal

⁷ *Westminster CC v SSE & Aboro* [1983] JPL 602, *Ferris v SSE* [1998] JPL 777

⁸ PINS letter to both parties dated 26 October 2021.

⁹ Town and Country Planning (General Permitted Development) (England) Order 2015

on behalf of the appellant, and hence they have been aware of the notice since it was issued.

17. The appeal on ground (e) fails.

Appeal on ground (c)

18. For this appeal on ground (c) to succeed the appellant must demonstrate that the matters alleged at Section 3 of the notice, as corrected, do not constitute a breach of planning control. The burden of proof in a ground (c) appeal falls to the appellant and the test of the evidence is on the balance of probability.
19. As I referred to earlier, both parties in their submissions indicated that at the date the notice was issued the use of the land for agriculture was also an element of the overall use of the land. Indeed, the LDC DL (para.65) issued on 9 October 2020 concludes: *"On the contrary, the images generally show green fields and vegetation, which is indicative of a primary agricultural use. This is corroborated by interested party evidence, which states that the use of the site until recently has been agricultural"*.
20. The concept of a 'material change of use' is not defined in any statute or statutory instrument; it is a question of fact and degree in each individual case. In judging whether there has been a material change of use in any given case there must be a significant difference in the character of the activity from what has taken place previously. Any off site impacts of any new activity may also be relevant material considerations in making such a judgment, for example on the residential amenity of neighbours, but they are not determinative by themselves and should not be considered in isolation.
21. The appellant acknowledges that within the appeal site there has at least been some storage of materials and goods and parking of transport and wagons (as evidenced as part of the LDC appeal). Additionally, the appellant confirms¹⁰ that *"..the uses stated by the LPA have in fact been present at the site for a period of time well exceeding 10 years and were established by the previous landowner soon after they acquired the site. These uses have remained present at the site in their entirety"*. I address later under ground (d) whether the alleged mixed use in the notice is immune from enforcement action. However, that aside, the appellant makes it clear that the non-agricultural activities, as alleged in the notice, formed part of the mixed use of the land at the date the notice was issued.
22. The use of the land for storage purposes including the parking and storage of commercial vehicles, commercial trailers including commercial box trailers, curtain side trailers and porta cabins together with waste materials, does not appear to me to be part of, or related to, any agricultural use of the land. Indeed, no convincing evidence has been submitted to suggest otherwise. I find these commercial activities in their nature and appearance to be markedly different from solely agricultural use of the land, resulting in a significant change in the character of the use of the land. As such, as a matter of fact and degree I conclude that there has been a material change of use of the land to a mixed use of agriculture and for storage as alleged. The material change of use constitutes 'development' as defined by s55 of the Act.

¹⁰ Appellant Grounds of Appeal Statement, Ground (c), paragraph 7.5

23. Since no planning permission has been granted for the use it constitutes a breach of planning control.

24. Hence, the appeal on ground (c) fails.

Appeal on ground (d)

25. For this ground of appeal to succeed the onus is on the appellant to demonstrate, on the balance of probability, that the breach of planning control was immune from enforcement action due to the passage of time, in this case being a continuous period of 10 years prior to the date on which the enforcement notice was issued; hence since 22 October 2010 or earlier.

26. The appellant suggests that the "*..site has accommodated these uses are present and a primary use, the uses are not the sole primary use and contribute to the other primary uses at the site*".¹¹

27. However, the LDC DL turned only on the question of whether the then claimed specific use - *storage of materials and goods, also the parking of transport and wagons* - was the sole primary use of the land over a 10 year period of time so as to be the lawful use of the land. The LDC DL concluded that there was insufficient evidence to establish such a lawful use and the appeal was dismissed. Notwithstanding that the specific description of land use subject of the LDC appeal differs from the one in this appeal, the LDC DL does not conclude anywhere within it that storage activities had taken place on the land continuously for more than 10 years. Indeed, as set out in the LDC DL, while there may have been a mixed use "*at some stage*" the site appeared to be mainly in use for agriculture in more recent years.

28. Consequently, the LDC DL gives no support to the appellant's claim that the alleged use subject of this appeal has been carried out continuously for a period of 10 years. Additionally, the Council's photographic evidence together with the collective evidence¹² of many local residents, including ramblers who use the local footpath, strongly indicate that the land was only in use for agriculture before 2019.

29. There is no other convincing evidence before me which points towards a 10 year period of continuous use. For these reasons, the appellant has failed to demonstrate, on the balance of probability, that the breach of planning control is immune from enforcement action.

30. The appeal on ground (d) therefore fails.

Appeal on ground (f)

31. An appeal on ground (f) is a claim that the requirements of the notice exceed what is necessary to remedy the breach of planning control, or, as the case may be, to remedy any harm to amenity resulting from the breach. In this case the notice requires the storage use element of the mixed use to cease, and the permanent removal of all related items. It is clear therefore that the purpose of the notice is to *remedy the breach of planning control*.

32. Contrary to the appellant's view, the requirements do not prevent any lawful use of the land, or any ancillary use to a lawful use, to cease. Use of land and

¹¹ Appellant Ground of Appeal Statement, Ground (d), para. 7.8, 7.9

¹² Council SOC paras. 4.17-4.18

buildings for agriculture is not s55 'development' and hence can be carried out at any time. In effect the notice simply requires the non-agricultural (commercial storage) use of the unauthorised mixed use to cease. In this regard, the appellant is best placed to know which of his activities, vehicles, portacabins and other items were brought onto the land for agricultural purposes, and which were not. It is thus unnecessary for the requirements to detail or categorise vehicles in line with the Vehicle Certification Agency definitions of commercial vehicles.

33. The requirements would also not prevent visits by commercial vehicles such as local authority vehicles or utility providers carrying out their normal business purposes for visiting the site.
34. The appellant will also be best placed to know where and whether stored waste materials on the land result from agriculture or not. Those waste materials that do not result from agricultural use are required to be removed. It is thus unnecessary for the requirements to refer to specific classifications of waste within the EA guidance¹³.
35. As stated earlier, the purpose of the notice is to remedy the breach of planning control. Since the requirements relate directly to the allegation by requiring the storage element of the mixed use to cease, and permanent removal of all related items, they go no further than remedying the breach of planning control and hence cannot be excessive requirements. Any lesser requirements would not fully remedy the breach. The appeal on ground (f) must therefore fail.

Other matters related to ground (f)

36. The parties refer to planning permission available under Article 3(1) and Schedule 2, Part 3, Class R, of the GPDO. Class R relates to "*Development consisting of a change of use of a building and any land within its curtilage from a use as an agricultural building to a flexible use..etc*".
37. The land/buildings in question occupy 3 discrete, roughly rectangular, areas within the appeal site. These were subject of an application and an allowed appeal¹⁴ after the notice was issued and after this enforcement notice appeal was lodged, hence when the whole of the land subject of the enforcement notice was in use for the mixed use as alleged.
38. The Council has submitted an alternative notice plan which would exclude these 3 areas from the existing notice plan, and hence from the notice requirements.
39. However, whether by the Council or by success on appeal, the grant of 'prior approval' (PA) in respect of Class R is not the same as a grant of planning permission. The Class R planning permission is contained within the GPDO. To be lawful the PA development must comply in all respects with the relevant limitations and conditions of Class R. As such, the grant of PA by itself should not be interpreted as meaning that the development complies with the GPDO. If it does not comply with the GPDO the grant of PA will not alter that position.
40. Consequently, whether the PA development would be a lawful use or not is in the first instance a matter for the appellant and the Council to determine.

¹³ Guidance on the classification and assessment of waste, Technical Guidance WM3, Environment Agency

¹⁴ Council Ref: 20/01127/AGRFLX, PINS Ref: APP/C3430/W/21/3272868

41. Given that the enforcement notice cannot prevent any lawful use of the land there is no need for the 3 rectangular areas within the appeal site to be excluded from the enforcement notice plan. I shall not therefore exclude them.

Appeal on ground (g)

42. The ground of appeal is that the period of time for compliance with the enforcement notice requirements falls short of what should reasonably be allowed. The notice requires compliance within 3 months.

43. The appellant's arguments for this ground of appeal relate back to earlier arguments concerning identification of vehicles and waste. However, I have already addressed those matters in ground (f) above.

44. I am mindful that the harm resulting from the breach of planning control should be remedied as soon as possible. Against that no other arguments are advanced for extending the compliance period and no longer period of time is suggested.

45. In light of all these factors I consider that 3 months is a reasonable amount of time in which to comply with the notice requirements.

46. The appeal on ground (g) therefore fails.

Formal Decision

47. It is directed that the notice be corrected by:

- in Section 3, line 2, after the word "used" insert the following words: "for a mixed use of agriculture and"
- in Section 4, deleting the 3 line paragraph

48. Subject to the corrections the appeal is dismissed and the enforcement notice is upheld.

Thomas Shields

INSPECTOR