

The Planning Inspectorate

ENFORCEMENT NOTICE APPEAL FORM (Online Version)

WARNING: The appeal **must** be received by the Inspectorate **before** the effective date of the local planning authority's enforcement notice.

Appeal Reference: APP/C3430/C/22/3291561

A. APPELLANT DETAILS

Name

Mr Tom Park

Address

Landywood Farmhouse
Landywood Lane
Great Wyrley
WS6 7AS

Preferred contact method

Email



Post



A(i). ADDITIONAL APPELLANTS

Do you want to use this form to submit appeals by more than one person (e.g. Mr and Mrs Smith), with the same address, against the same Enforcement notice?

Yes



No



B. AGENT DETAILS

Do you have an Agent acting on your behalf?

Yes



No



Name

Miss Katherine Else

Company/Group Name

Claremont Planning Consultancy Ltd

Address

Somerset House
37 Temple Street
BIRMINGHAM
B2 5DP

Phone number

0121 803 7902

Email

kelse@claremontplanning.com

Preferred contact method

Email



Post



C. LOCAL PLANNING AUTHORITY (LPA) DETAILS

Name of the Local Planning Authority

South Staffordshire District Council

LPA reference number (if applicable)	19/00624/COU
Date of issue of enforcement notice	22/12/2021
Effective date of enforcement notice	28/01/2022

D. APPEAL SITE ADDRESS

Is the address of the affected land the same as the appellant's address?	Yes	<input type="checkbox"/> No	<input checked="" type="checkbox"/>
Does the appeal relate to an existing property?	Yes	<input checked="" type="checkbox"/> No	<input type="checkbox"/>
Address	Landywood Farm Landywood Farm Lane Cheslyn Hay WS6 7AS		
Are there any health and safety issues at, or near, the site which the Inspector would need to take into account when visiting the site?	Yes	<input type="checkbox"/> No	<input checked="" type="checkbox"/>
What is your/the appellant's interest in the land/building?			
Owner	<input type="checkbox"/>		
Tenant	<input checked="" type="checkbox"/>		
Mortgagee	<input type="checkbox"/>		
None of the above	<input type="checkbox"/>		

E. GROUNDS AND FACTS

Do you intend to submit a planning obligation (a section 106 agreement or a unilateral undertaking) with this appeal?	Yes	<input type="checkbox"/> No	<input checked="" type="checkbox"/>
(a) That planning permission should be granted for what is alleged in the notice.	<input type="checkbox"/>		
(b) That the breach of control alleged in the enforcement notice has not occurred as a matter of fact.	<input type="checkbox"/>		
(c) That there has not been a breach of planning control (for example because permission has already been granted, or it is "permitted development").	<input type="checkbox"/>		
(d) That, at the time the enforcement notice was issued, it was too late to take enforcement action against the matters stated in the notice.	<input type="checkbox"/>		
(e) The notice was not properly served on everyone with an interest in the land.	<input checked="" type="checkbox"/>		
The facts are set out in			
<input checked="" type="checkbox"/> see 'Appeal Documents' section			
(f) The steps required to comply with the requirements of the notice are excessive, and lesser steps would overcome the objections.	<input checked="" type="checkbox"/>		
The facts are set out in			
<input checked="" type="checkbox"/> the box below			
See Statement of Case supplied above in response to Ground (e) which also provides response to Ground (f)			
(g) The time given to comply with the notice is too short. Please state what you consider to be a reasonable compliance period, and why.	<input checked="" type="checkbox"/>		

The facts are set out in

☒ the box below

See Statement of Case supplied above in response to Ground (e) which also provides response to Ground (g)

F. CHOICE OF PROCEDURE

There are three different procedures that the appeal could follow. Please select one.

1. Written Representations ☒

(a) Could the Inspector see the relevant parts of the appeal site sufficiently to judge the proposal from public land? Yes ☒ No ☐

(b) Is it essential for the Inspector to enter the site to check measurements or other relevant facts? Yes ☐ No ☒

2. Hearing ☐

3. Inquiry ☐

G. FEE FOR THE DEEMED PLANNING APPLICATION

1. Has the appellant applied for planning permission and paid the appropriate fee for the same development as in the enforcement notice? Yes ☐ No ☒

2. Are there any planning reasons why a fee should not be paid for this appeal? Yes ☐ No ☒

If no, and you have pleaded ground (a) to have the deemed planning application considered as part of your appeal, you must pay the fee shown in the explanatory note accompanying your Enforcement Notice.

H. OTHER APPEALS

Have you sent other appeals for this or nearby sites to us which have not yet been decided? Yes ☐ No ☒

I. SUPPORTING DOCUMENTS

01. Enforcement Notice:

☒ see 'Appeal Documents' section

J. CHECK SIGN AND DATE

I confirm that all sections have been fully completed and that the details are correct to the best of my knowledge.

I confirm that I will send a copy of this appeal form and supporting documents (including the full grounds of appeal) to the LPA today.

Signature

Miss Katherine Else

Date

27/01/2022 12:47:47

Name

Miss Katherine Else

On behalf of

Mr Tom Park

The gathering and subsequent processing of the personal data supplied by you in this form, is in accordance with the terms of our registration under the Data Protection Act 2018.

The Planning Inspectorate takes its data protection responsibilities for the information you provide us with very seriously. To find out more about how we use and manage your personal data, please go to our [privacy notice](#).

K. NOW SEND

Send a copy to the LPA

Send a copy of the completed appeal form and any supporting documents (including the full grounds of the appeal) to the LPA.

To do this by email:

- open and save a copy of your appeal form
- locating your local planning authority's email address:
<https://www.gov.uk/government/publications/sending-a-copy-of-the-appeal-form-to-the-council>
- attaching the saved appeal form including any supporting documents

To send them by post, send them to the address from which the enforcement notice was sent (or to the address shown on any letters received from the LPA).

When we receive your appeal form, we will write to you letting you know if your appeal is valid, who is dealing with it and what happens next.

You may wish to keep a copy of the completed form for your records.

L. APPEAL DOCUMENTS

We will not be able to validate the appeal until all the necessary supporting documents are received.

Please remember that all supporting documentation needs to be received by us within the appropriate deadline for the case type. If forwarding the documents by email, please send to **appeals@planninginspectorate.gov.uk**. If posting, please enclose the section of the form that lists the supporting documents and send it to Initial Appeals, Temple Quay House, 2 The Square, Temple Quay, BRISTOL, BS1 6PN.

You will not be sent any further reminders.

Please ensure that anything you do send by post or email is clearly marked with the reference number.

The documents listed below were uploaded with this form:

Relates to Section: GROUNDS AND FACTS
Document Description: Facts to support that the notice was not properly served on everyone with an interest in the land.
File name: Land at Landywood Farm House.Statement of Case.Jan2022.pdf

Relates to Section: SUPPORTING DOCUMENTS
Document Description: 01. The Enforcement Notice.
File name: Enforcement Notice.pdf

Completed by MISS KATHERINE ELSE

Date 27/01/2022 12:47:47



**ENFORCEMENT APPEAL UNDER
SECTION 174 OF THE TOWN AND
COUNTRY PLANNING ACT**

**RELATING TO LANDYWOOD FARM,
LANDYWOOD LANE, CHESLYN HAY**

**STATEMENT OF CASE
19/00624/UNCOU**

**ON BEHALF OF
MR TOM PARK**

26 January 2022

Our Ref: CLR242

Claremont Planning Consultancy Ltd

Somerset House
37 Temple Street
Birmingham
B2 5DP

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QUALITY MANAGEMENT

Prepared and Authorised by:	Eleanor Lovett / Katherine Else
Date:	26 January 2022
Project Number/Doc Reference:	CLR242/SOC

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1 INTRODUCTION

1.1 Background

- 1.1.1 Claremont Planning Consultancy has been instructed by the appellant, Mr Tom Park, to prepare and submit an appeal against a planning enforcement notice issued by South Staffordshire District Council (the Council) relating to an alleged breach of planning control at Landywood Farm, Landywood Farm Lane, Cheslyn Hay, Walsall, WS6 7AS.
- 1.1.2 The Council allege that there has been a material change of use of land without planning permission, to land used as a storage facility including the storage of construction material, plant equipment and other materials and paraphernalia used in association with a civil engineering business under Use Class B8 of the Town and Country Planning (Use Classes) Order 1987 (as amended).
- 1.1.3 The appeal relates to a use that has been ongoing on the site since 2019 and was the subject of a planning application which sought to regularise the use (20/00288/COU). That application was ultimately unsuccessful, and as a result the appellant has been seeking to identify alternative premises for the business to enable its relocation. It is considered that the enforcement notice has not been issued lawfully in this instance as will be demonstrated in this Statement. Furthermore, it will also be demonstrated that the requirements identified in the enforcement notice are onerous and excessive, whilst the time periods with which to comply are insufficient.
- 1.1.4 It is therefore advanced within this Statement that:
- The notice was not properly served on every party with an interest in the land;
 - The steps required to comply with the requirements of the notice are excessive and lesser steps would overcome the objections; and
 - The time given to comply with the notice is too short.

2 APPEAL SITE

2.1 Site Context

- 2.1.1 The site is located off Landywood Farm Lane to the south-west of Landywood, within the Parish of Great Wyrley. The site forms part of the land associated with 'Landywood Farm House', a Grade II Listed Building which was renovated and returned back to residential use following the grant of planning permission and associated Listed Building consent in 2013.
- 2.1.2 The appeal relates to a relatively flat parcel of land situated to the south-western corner of Landywood Farm House and extends to approximately 0.3ha. The site is laid out as a commercial contractor's yard that is hard surfaced and which includes vehicle parking and manoeuvring areas, temporary structures, and a number of precast concrete storage pits with a free-standing industrial concrete mixing plant. The site is enclosed by a metal fence with gates installed at the site entrance.
- 2.1.3 The site is screened on its Landywood Farm Lane frontage by a mature hedgerow, with defined enclosure to the northern boundary with Landywood Farmhouse. Historically, the site has been used for agricultural purposes including the storage of farming plant, equipment, silage bales and materials. The site has however more recently been used for the storage of construction plant and materials, in association with the appellant's business.
- 2.1.4 The site is located within the West Midlands Green Belt; however, this has no bearing upon the lawfulness of the operations on the site and the appropriateness of enforcement action. Although in the Council's determination of planning applications on the site the consideration of Green Belt openness has been a factor, this consideration should not solely inform the extent and degree of actions to remedy the enforcement notice, particularly in respect of otherwise permitted development works such as boundary treatments.

2.2 Planning History

- 2.2.1 A review of the Council's planning portal has identified the following applications relating to the site.
- **91/00577** – Use of land for showman's permanent quarters – refused 1991
 - **93/00103** – Showman's permanent quarters – refused 1993
 - **93/00023/LBC** – Demolition of farm building – approved 1993
 - **13/00570/FUL** – Renovation and extension of farmhouse, change of use of redundant farm buildings to residential use – approved 2013
 - **13/00571/LBC** – Renovation and extension of farmhouse, change of use of redundant farm buildings to residential use – approved 2013
 - **20/00288/COU** – Retention of storage facility and change of use to B8 – refused 2021
- 2.2.2 In addition to the applications referred to above, also of relevance to this appeal is the Planning Enforcement notice which is the subject of this appeal. The enforcement case reference is 19/00624/UNCOU

3 PLANNING POLICY CONTEXT

3.1 Introduction

- 3.1.1 This section of the Appeal Statement will provide a brief overview of the relevant provisions of national and local planning policy that are pertinent to this case.

3.2 National Planning Policy & Guidance

National Planning Policy Framework

- 3.2.1 The Government published a revised National Planning Policy Framework (the NPPF) on 20 July 2021.
- 3.2.2 Paragraph 59 of the NPPF identifies that effective enforcement is important to maintain public confidence in the planning system. However, it establishes that enforcement action is discretionary, with local planning authorities encouraged to act proportionately in responding to suspected breaches of planning control.
- 3.2.3 Paragraph 137 of the NPPF confirms the essential characteristics of the Green Belt are their openness and permanence, whilst Paragraph 138 asserts the five purposes of the Green Belt. Paragraph 147 and 148 state that inappropriate development is harmful to the Green Belt, and should not be approved except in very special circumstances. Paragraph 150 identifies that certain forms of development are not inappropriate in the Green Belt, provided that they preserve its openness and do not conflict with the purposes of including land within it.

Planning Practice Guidance

- 3.2.4 Following the publication of the NPPF, the Government provided Planning Practice Guidance (PPG) to provide clarity and assistance as to how the policies in the NPPF should be interpreted and applied.
- 3.2.5 The PPG confirms that a breach of planning control is defined in Section 171 of the Town and Country Planning Act 1990 as:
- The carrying out of development without the required planning permission; or
 - Failing to comply with any condition or limitation subject to which planning permission has been granted.
- 3.2.6 Notably the guidance advises that LPAs are able to require lesser actions to remedy a breach in planning control that do not require all building works to be removed for example [Paragraph: 020 Reference ID: 17b-020-20140306].

3.3 Local Planning Policy & Guidance

- 3.3.1 The site is located within the District of South Staffordshire, and for the purpose of this appeal, the adopted Development Plan comprises the Core Strategy and the Site Allocations Document.
- 3.3.2 Policy GB1 of the Core Strategy confirms that making a material change of use of land will normally be permitted where the proposed use would have no material effect on the openness of the Green Belt, or the fulfilment of its purposes.
- 3.3.3 Policy EQ3 relates to the conservation, preservation and protection of heritage assets, requiring all development which affects a heritage asset or its setting to be informed by a proportionate assessment of the significance of the asset.
- 3.3.4 Policy EQ4 identifies that the intrinsic rural landscape and local distinctiveness of the landscape should be maintained and where possible enhanced.
- 3.3.5 Policy EQ9 relates to protecting residential amenity, requiring development proposals to take into account the amenity of nearby residents, particularly with regard to privacy, security, noise and disturbance, pollution, odours and daylight.
- 3.3.6 Policy EQ11 requires all developments to be of the highest quality design, encouraging the use of creative and sustainable designs.

4 GROUNDS OF THE APPEAL

4.1 The Grounds of the Appeal

4.1.1 Section 174 of the Town and Country Planning Act 1990 provides that an appeal can be submitted against an enforcement notice, by any person having an interest in the land to which an enforcement notice relates, whether or not a copy of the notice has been served on him. It goes on to identify that an appeal can be brought on various grounds, of which the following are of relevance in this case:

- (e) that copies of the enforcement notice were not served as required by section 172;
- (f) that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach;
- (g) that any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed.

5 PLANNING CASE

5.1 Introduction

This section of the Statement will consider each of the grounds identified in Chapter 4 in turn. It will demonstrate the deficiencies in the enforcement notice issued and justify why the enforcement notice should be quashed in this case.

5.2 Ground 1: 174(e) copies of the notice were not served as required by Section 172

5.2.1 The TCPA 1990 confirms in Section 172 that the local planning authority may issue a notice where it appears 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 any other material considerations.

5.2.2 It goes on to state in 172(2) that a copy of the enforcement notice shall be served on the owner and on the occupier of the land to which it relates, and on any other person having an interest in the land being an interest which, in the opinion of the authority is materially affected by the notice.

5.2.3 The Enforcement Notice identifies the persons served with a copy of the enforcement notice, which comprises:

- Tom Park
- James Wallace
- Wallace Land Investment & Management Limited
- The Company Secretary - Datom Civil Engineering Limited
- James Park

5.2.4 In addition to those identified on the enforcement notice however, Landywood Farm is the registered address of another company, 'Datom Electrical Services Limited'. This is confirmed by the records held by Companies House for Datom Electrical Services Limited - Company number 08587387, the registered address is Landywood Farm as contained within the 'the Land' identified by the issued enforcement notice. Datom Electrical Services Ltd have occupied the site since July 2014 and should therefore be considered to be an occupier of the Land on which a notice should have been served.

5.2.5 The TCPA 1990 establishes that all occupiers of the land to which the enforcement notice relates should be served a copy of the notice. As no copy of the notice was provided to Datom Electrical Services Limited, which operates from and occupies the Land, it is contended that the enforcement notice was not served correctly and should be quashed.

5.3 Ground 2: 174(f) the steps required to be taken are excessive

5.3.1 Section 173 of the TCPA 1990 requires that the enforcement notice should specify the steps that the authority require to cease, in order to achieve wholly or partly:

- Remedying the breach by making any development comply with the terms of any planning permission which has been granted, by discontinuing any use of the land or by restoring the land to its condition before the breach took place; or
- Remedying any injury to amenity which has been caused by the breach.

5.3.2 Section (5) of the Enforcement Notice identifies the required actions in the case of the appeal site. These comprise:

- i. Permanently cease the use of the Land outlined in red as a storage facility under use class B8.
- ii. Permanently remove from the Land (indicated in the approximate area shaded green on the Plan) all equipment construction materials, plant equipment and materials used in association with the civil engineering business and all other materials and equipment currently stored on the Land.
- iii. Permanently remove from the Land (indicated in the approximate area shaded green on the Plan) all heavy plant equipment whether free standing or fixed.
- iv. Dismantle and permanently remove from the Land, (indicated in the approximate area shaded green on the Plan) all precast concrete storage enclosures, stone block enclosures, concrete hardstanding and boundary treatments including all metal palisade fencing to the east, south and western boundaries of the development including the metal palisade gates and brick pillars at the site entrance.
- v. Restore the Land (indicated in the approximate area shaded green on the Plan) back to its original condition prior to the unauthorised development.

5.3.3 It is considered that the actions identified within Section (5) iv and v are considered unnecessary and excessive to remedy the breach of planning control. This is particularly in respect the removal of boundary treatments, concrete hardstanding and metal gates that secure entrance to the land. It is considered that such actions are considered unnecessary to remedy the breach of planning control that has been identified which relates to the 'Use' of the site for B8 storage primarily.

5.3.4 The brick pillars and metal gates are considered to represent appropriate boundary treatments when considering the wider context of the site, and the approved and constructed boundary treatments for Landywood Farmhouse to the north of the appeal site that are above 1metre in site and incorporate metal railings in their design. The erected boundary fencing around the site extent, along the southern and eastern boundaries specifically have been identified for removal despite boundaries of this type to a height of 2m being permissible through permitted development rights. There are no article 4 directions or conditions restricting boundary treatment on the site that would restrict the majority of the palisade fencing from being erected through permitted development powers, therefore the requirement for its removal is excessive. Furthermore, the palisade fencing and gates, along with the hardstanding can be used in conjunction with the lawful use of the site for agricultural uses, such as was the case prior to the breach of planning control commencing.

5.3.5 In order to remedy the breach of planning control, it is considered sufficient to remove the construction material, plant equipment and materials in conjunction with the civil engineering business, which would extinguish the unlawful use of the site. It is the appellant's intention to relocate the business in any event, subject to securing appropriate alternative premises.

5.4 Ground 3: 174(g) the period to comply falls short of what should reasonably be allowed

5.4.1 The enforcement notice identifies a period of 4 (four) months from the date the notice takes effect as the period of compliance. This means that the appellant would be required to undertake these unnecessary excessive works within a period of less than six months from the notification that the Council was undertaking enforcement action, which is inadequate. This short compliance period is particularly relevant given that some COVID19 measures were still in place when the Enforcement Notice was served. Through the lock downs and restrictions imposed to control COVID19 National Government has released advice to LPAs with respect to the operation of the planning system, specifically with respect to enforcement matters. Through Ministerial Guidance issued in December 2020 as altered through the Chief Planning Newsletter, LPAs were urged to apply pragmatism to enforcement cases, particularly where discretion is warranted where families or businesses required relocation. It is advanced that the same approach could have been taken with this case through a longer time period to comply with the notice, acknowledging that the appellant will need to relocate a business rather than just equipment. It would not have been unreasonable to expect the LPAs to have built in an extension to the Notice compliance period to take into account a reasonable delay caused by the COVID19 crisis.

5.4.2 The unlawful use of the site has been established without consent, as acknowledged through the determined planning application (20/00288/COU) which sought to remedy the planning breach and seek planning permission for the retention of a storage facility and related B8 change of use. That application was submitted in 2020, and subsequently refused in 2021 after 12 months of consideration, a highly protracted consideration period given the apparent inappropriateness of the development. This refusal was despite demonstration of the limited nature of the use, the need for the use to support an existing business, and the minimal impact that the use had on the local and wider environment. The Council however chose to refuse the application in this case, confirmed by the decision notice issued in March 2021.

5.4.3 As a result, the appellant has sought to identify alternative premises to relocate the business. It has been challenging to identify such a premises that would be appropriate to fulfil the commercial requirements of the business, whilst maintaining the business' presence in the locality. Particularly during the COVID19 restrictions and related property market conditions where land and property availability has been restricted. This has been especially relevant in terms of the limited locational search and hindered the ability to identify an alternative site.

5.4.4 It is therefore considered that should enforcement action be proceeded with, despite what has been identified in this Statement, the period for compliance should be extended to 12 months. Given the LPA took 12 months to determine the application 20/00288/COU the prospect of an extended compliance period should not be unacceptable. This would ensure that the appellant is able to identify appropriate premises to relocate the business to, and ensure that all equipment construction materials, plant equipment and materials used in association with the civil engineering business and all other materials and equipment currently stored on the Land can be removed within the appropriate timescales, as well as works being undertaken to remove structures on site.