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JAYMINI PATEL and RAVINDRA ASHABHAI PATEL

-v-

SOUTH STAFFORDSHIRE COUNCIL

Land to the North of 12 The Highfields Wightwick Wolverhampton WV6 8DW in
Title Number SF 469642

ENFORCEMENT NOTICE APPEAL

APP/C3430/C/25/3362523 and APP/C3430/C/25/3362527

FINAL COMMENTS

10 June 2025

Patrick Cluxton MRICS



Formalities

1. The Local Planning Authority have submitted a COMMENTS ON CASE separatley from their Statement of Case. The form refers to an Appeal by Mr R A PATEL: Jaymini Patel not named. The sender is not named

Page 2 has "Relates to Section: REPRESENTATION"

The Appellants have not been fully informed as to any Representation(s) which may have been submitted by any neighbouring residents nor by any other interested parties.

Therefore we cannot submit any Final Comments on any Representation(s) from any interested parties. The form is now included for the Inspector's consideration.

For official use only (date received): 21/05/2025 16:34:27

The Planning Inspectorate**COMMENTS ON CASE (Online Version)**

Please note that comments about this case need to be made within the timetable. This can be found within the start date letter.
Comments submitted after the deadline may be considered invalid and returned to sender.

Appeal Reference: APP/C3430/C/25/3362523**DETAILS OF THE CASE**

Appeal Reference

APP/C3430/C/25/3362523

Appeal By

MR R A PATEL

Site Address

Land to the north 12 The Highfields
Wightwick
Wolverhampton
WV6 8DW
Grid Ref Easting: 387116.0
Grid Ref Northing: 298976.0

SENDER DETAILS

Name

Not Set

ABOUT YOUR COMMENTS

What kind of representation are you making?

- ☐ Final Comments
- ☐ Proof of Evidence
- ☒ Statement
- ☐ Statement of Common Ground
- ☐ Interested Party/Person Correspondence
- ☐ Other

COMMENT DOCUMENTS

The documents listed below were uploaded with this form:

Relates to Section: REPRESENTATION
Document Description: Your comments on the appeal.
File name: 04. Land North of 12, The Highfields LPA Statement of Case.docx
File name: Appendices 1 - 5.pdf

PLEASE ENSURE THAT A COPY OF THIS SHEET IS ENCLOSED WHEN POSTING THE ABOVE DOCUMENTS TO US

Final Comments on the Statement of Case
submitted by South Staffordshire (District) Council
Local Authority Reference 19/00230/UNCOU [un-dated] Title Page and 8 numbered
pages 5 Appendices – Council References

1. INTRODUCTION

1.4 The Enforcement Notice was Served on Mr and Mrs Patel at 12 The Highfields Wightwick Wolverhampton WV6 8DW thereby joining land in Title Number WM 203139 registered to Ravindra Ashabhai Patel with land in Title Number SF 469642 registered to Jaymini Patel. The Plan attached with the Enforcement Notice and now with the Council's Statement at Appendix 2, shows a Red Line Boundary which only surrounds SF 469642.

We submit that the Red Line Boundary should have included WM 203139 and that Wolverhampton City Council should have been consulted before a Valid Enforcement Notice could have been Served. We have taken the Notice to be valid in order to Appeal it on the Grounds.

The inspector may deliberate and conclude that the Enforcement Notice was not and is not valid.

2. SITE DESCRIPTION AND REASONS FOR ISSUING THE NOTICE

2.1 We submit that the Local Planning Authority have failed to show and prove that a material change of use, nor any change of use occurred after 19 February 2015 and therefore within 10 years of the date on the Enforcement Notice. The Council have failed to find a Change of Use between Agricultural and Residential which occurred less than 10 Years before the Enforcement Notice was Served.

2.2 – 2.9 These Submissions refer to Planning Policies but we do not rely on Ground A. We submit that these submissions must be ignored by the Inspector.

2.10 This is not an Appeal against the Refusal of a Planning Application and Planning Policies cannot be considered. We submit that 2.10 must be ignored by the Inspector.

2.11 and 2.12 These are references to Planning Policies and must be ignored.

3. PLANNING HISTORY

The Local Planning Authority have tied the Land enforced against with the house known as "12 The Highfields" 12 The Highfields has a Planning Record.

4. SUMMARY OF EVENTS

- 4.2 The “planning agent” is not the Agent Acting for Mr and Mrs Patel in this Enforcement Notice Appeal. We ask the Inspector to disregard the claim that “the planning agent stated that the land would be used in association with the agricultural use of the land” . The Land enforced against was not in Agricultural use in April 2019 and has not been in Agricultural use since 1961 at the latest. In the absence of any Sworn Declaration(s) in relation to this “Site Meeting” we ask the Inspector to ignore 4.2
- 4.3 The Land enforced against has been garden land since 1961 at the latest in Land Law and was originally intended to be a building plot; together with four other building plots on that side of the drive. We submit that the removal of the hedge is immaterial, 12 The Highfields is a residential property and the Land enforced against is also residential garden land, in Land Law.
- 4.4 The Satellite Images submitted within our Statement of Case and submitted as Appendix 3 attached with the Council’s Statement; show and prove that all five plots were kept mown and tidy from 1999 at the latest to date.
- 4.5 These are the features which the Council have decided to enforce against. We submit that they are bona fide and typical features of garden land used in conjunction with a dwelling.
- 4.6 A Pre-Application Enquiry was made to the Council as a response to the Council’s threats of Enforcement Action; the Appellants’ only formal option to test the Council’s approach to a proposed reduction and improvement to the parking area, in conjunction with a vast improvement to the remaining site area for wildlife. The Council declined the offer.
- 4.7 As a result of the Council's approach, the Planning Process could not be used to resolve the issue and thereby avoid Enforcement Action.

5. GROUNDS FOR APPEAL

Those are our Grounds of Appeal.

6. LPA RESPONSE TO GROUNDS FOR APPEAL – GROUND B

Our Evidence is the Conveyance dated 11 December 1961, included in our Appeal Statement at A5 C1 – C11 inclusive. The Conveyance clearly defines the Land enforced against as garden land, at 5 and the Plan referred to clearly identifies the five plots (A5 C11)

7. LPA RESPONSE TO GROUNDS FOR APPEAL – GROUND C

The Appellants are using bona fide garden land for bona fide residential uses and we submit that there has been no breach of planning control.

8. LPA RESPONSE TO GROUNDS FOR APPEAL – GROUND D

8.1 The Conveyance is offered in evidence, as it would be in a Court of Law, The Local Planning Authority offer no evidence to prove that there has been any other material use of the Land enforced against between the historic Agricultural use and the Residential use now seen.

8.2 The Council's submission here does not alter the fact that the plots were identified in a Conveyance dated 11 December 1961 and were bought separately after that by the "Sub- Purchasers" and have changed ownership since then. Our submission here is that the plots have been available for separate use and sale since 11 December 1961, whether separated by boundary features on site, or not.

8.3 The Land enforced against is generally Trapezoidal in shape but extends to a rectangular shape in the South-West corner. This is best seen on the Satellite Image from 2018, included in our Statement on Page A7 Sl8. The rectangle allowed vehicular access onto the Land enforced against, before the hedge was removed, in practice; and supports our submissions. All the Satellite Images show and prove that all the Successors in Title to all 5 plots have kept their lands neat and tidy; as garden land; one of the Owner/Occupiers of plot 1 planted some fruit trees on their land. If the successive Owners of the plots had not kept them neat and tidy as garden land, they would now be overgrown with grass, plants, shrubs and trees and some of the trees would now be 60-70 years old. In fact, the plots are all clear of all growth except for a short length of inner hedges on plot 4 and some ornamental shrubs right at the North end of plots 2 and 3.

In our submission here; the plots including the Land enforced against have the appearance of garden land and all the plots have been used as garden land by the owners since 1961 at the latest.

8.4 The point being made is that the plots have not been developed for house building as allowed at 6 in the Conveyance.

The potential for house building on the plots to include the Land enforced against, is now controlled by Current Planning Policies. None of this alters the fact there was no other use of the land between the historical Agricultural use and the kept Garden use which began in December 1961 at the latest.

In our submissions later nomenclature does not alter this truth.

The Land enforced against might now be referred to as within the "Grounds" of 12 The Highfields or might be referred to as "green open space" (but not public green open space). Modern terms do not alter the fact that residential plots were created in December 1961 and they have been kept as residential garden land since then.

- 8.5 The Land has indeed "been incorporated into the curtilage of the residential garden": Two lands, both with residential use; brought together: the two Titles making no difference in Land Law and no difference in Planning.

The Land enforced against was already garden land when Mrs Patel bought it in 2003 (Registered 23.04.2003)

In any event the Appellants have been using the land as amenity space for 12 The Highfield (aka garden land) for in excess of 10 years [22 years] as the Appellants in this case,

We submit that the introduction of the gravel and the plant pots between June 2018 and May 2019 was not and is not a Material Change of Use and the Enforcement Notice must fail for being based on the wrong premise; inter alia.

- 8.6 We agree that the Land enforced against is "part of the residential garden of 12 The Highfields".

- 8.7 We submit that the only Material Change of Use relating to the Land took place in 1961 and that neither the gravel nor the plant pots can be defined as unauthorised in Planning Law.

(The Murfitt case pre-dates the Town and Country Planning Act 1990 (1980) and relates to a farmer diversifying into the haulage business on an extended farmyard. That was clearly a Material Change of Use in principle, with the laying of hardcore a consequence of the change)

As a matter of fact and degree this Appeal is different in the circumstances.

- 8.8 There were no plant pots in the Murfitt case.

- 8.9 The Change of Use took place in 1961 and Mrs Patel, and Mr Patel have been using the land enforced against since 2003, in conjunction with their occupation of 12 The Highfields. Mrs Patel has in excess of 10 Years of amenity use in her own name and would swear to that at an Inquiry or in a Court of Law if necessary.

9. LPA RESPONSE TO GROUNDS FOR APPEAL – GROUND F

If the inspector were minded to uphold our Appeal on Grounds B,C and D: The Council's Statement here would be negated.

SUMMARY OF FINAL COMMENTS

- SFC 1. A Local Planning Authority are empowered to Serve multiple Enforcement Notices against the same site for the same or similar perceived breaches of Planning Control. Mindful of that, the Appellants have overlooked what we consider to be fundamental flaws in the Enforcement Notice in order to Appeal on the issues.
- The Inspector is invited to consider the points we have raised in relation to the fundamental integrity of the Notice as Served. The Inspector may want to add to the knowledge as to what is required in order for an Enforcement Notice to be valid?
- SFC2. Our Appeal does not rely on Ground A : we invite the Inspector to disregard the Council's Statement, including the Appendices, and the Council's Final Comments where referring to Planning Policies.
- SFC3. The main issue is whether or not the Local Planning Authority were correct to issue an Enforcement Notice against Jaymini Patel and Ravindra Ashabhai Patel on 18 February 2025. The Council's sole justification must be that a Material Change of Use had occurred within a 10 year period preceding that date: Planning Policies not to be considered.
- SFC4. We say that a Material Change of Use did not take place between 19 February 2015 and 18 February 2025.
- SFC5. We say that a Material Change of Use took place in 1961; from Agricultural Land to Garden Land.
- SFC6. We say that Jaymini Patel, and Ravindra Ashabhai Patel, as related, have together enjoyed a close and personal relationship with the Land enforced against since 2003 and for a period of time well in excess of the minimum period required for Immunity from Enforcement Action : 10 Years.
- SFC7. We submit that it is not necessary for the Land and 12 The Highfields to be in the same Title Number in the Land Register; for the Land enforced against to be enjoyed as garden land by the Appellants.

SFC8. It is established that land which does not adjoin a dwelling can be defined as amenity space for that dwelling ; in this case the land enforced against adjoins the land in Title Number WM 203139. The two Titles now combine to comply with the traditional definition of a garden -“Land that is or forms part of the garden or grounds of a dwelling including any buildings or structures on that land”

SFC9. In 2008 a Landmark Decision in the High Court expanded the definition and ruled on the approach to be taken when considering the definition of garden land.

Rockall -v- Department for the Environment, Food and Rural Affairs
in England and Wales High Court (Administrative Court) Appeal Decision
dated 3 July 2008.

Lord Justice Moses (and Mr Justice Blake) sitting said:

“The Oxford English Dictionary states that a garden is an enclosed piece of ground devoted to the cultivation of flowers fruit or vegetables”. The definition is clearly now too narrow, as the current fashion for wild gardens and meadow areas amply demonstrates.

The reality is that no description will categorically establish whether a piece of land is a garden or not. It is incumbent on the fact finder to determine its use. It is important to look at the relationship between the owner of the land, and the history and character of the land and space.

Mr Rockall’s intention was found to be an intention to use the land as a garden.

The history of the land, coupled with the responsible behaviour of Mr Rockall, drives me to that conclusion. The Court was not correct to find that Mr Rockall could not avail himself of the garden defence and I would allow this appeal”

Immediately after the Decision, Counsel for Mr Rockall summarised the approach taken for the Appeal Decision in the High Court:

“Whether a garden is a garden depends not on what it looks like or the manner in which it has been kept but on the history of the land, the use to which it was put and the intention of the owner of the land.....”

SFC10. Solongas an area of land has a function which supports the dwelling and which is not a commercial function; any area of land can be considered as garden land (and amenity land in modern parlance) if it serves a dwelling. In this case the Land enforced against serves 12 The Highfields (but 12 The Highfields is not included in the Red Line Boundary on the plan

which was attached with the Enforcement Notice). The difficulty for the Inspector is that any and all Planning Decisions are confined to Land within the Red Line Boundary on the Application or (any) Notice.

SCF 11.

It is central to the Council's case that the Land enforced against is used in conjunction with the dwelling known as 12 The Highfields; and it is. South Staffordshire (District) Council did not consult with Wolverhampton City Council in relation to the Notice and the Red Line Boundary does not surround the dwelling where the Appellants live. Whilst any LandOwner can be served with an Enforcement Notice at any address (with a copy usually also sent to and/or attached to the land enforced against]: In this case SF 469642 and WM 203139 are inextricably linked in the matter and the Inspector may conclude that the Enforcement Notice is invalid:


1. Because Wolverhampton City Council were not consulted and
2. Because the Red Line Boundary does not include 12 The Highfields (and because of Jurisdiction, the Red Line Boundary could not include 12 The Highfields without consultation between the two Authorities].

SFC12.

We believe that we are safe in Land Law and safe in Planning Law.

SFC13.

We ask the Inspector to Quash the Enforcement Notice and thank you for your consideration of our Appeal.



Patrick Cluxton MRICS

For and on behalf of
Jaymini Patel and Ravindra Ashabhai Patel
Appellants.

10 June 2025