The Planning Inspectorate

Appeal Decision

Site visit made on 6 July 2022

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 15th July 2022

Appeal Ref: APP/C3430/C/22/3291561
Landywood Farm, Landywood Farm Lane, Cheslyn Hay, WS6 7AS

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Tom Park against an enforcement notice issued by South Staffordshire District Council.
- The notice was issued on 22 December 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 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).
- The requirements of the notice are to:
  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 indicating 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 storage 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.
- The period for compliance with the requirement is 4 months
- The appeal is proceeding on the grounds set out in section 174(2)(e), (f) and (g) of the Town and Country Planning Act 1990 as amended.
  Summary of Decision : Subject to variations the appeal is dismissed and the notice is upheld

Decision

1. It is directed that the enforcement notice is varied by:

   i)Deleting the allegation in full and replacing it with

   "Without planning permission, the making of a material change of use of the part of the Land (indicated in the approximate area shaded green on the plan) 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).

ii)Deleting the first requirement in full and replacing it with

"Cease the use of the land (indicated in the approximate area shaded green on the Plan) as a storage facility used in association with a civil engineering business under Class B8 of the Town and Country Planning (Use Classes Order 1987 (as amended)

iii)Deleting the word "Permanently" from requirements i) to iv)

iv)Deleting the second requirement in full and replacing it with

"Remove from the land (indicated in the approximate area shaded green on the Plan), all construction material, plant equipment and other materials and paraphernalia stored on the land in association with a civil engineering business Use Class B8 of the Town and Country Planning (Use Classes) Order 1987 (as amended)

v)Adding the words "taking place" to the end of requirement v).

vi)Deleting all references in the requirements to" the Land" and replace them with "the land"

2. Subject to the variations, the appeal is dismissed and the enforcement notice is upheld.

Preliminary Matters

3. The appellant has appealed on grounds (e)(f) and (g) only. There is no ground (a) appeal before me which would have included an application for planning permission and therefore planning policies or the merits of the development are not matters that I can take into account in determining this appeal.

The Notice

4. It is the duty of the Inspector to put the notice in order. The allegation and the requirements should match and the notice needs to make clear that the allegation and requirements relate only to the smaller area shaded green which is part of the Land (edged red). The allegation needs to be amended to specifically refer to the area shaded green and the wording of the first requirement needs to match the allegation in terms of the green and not red area being the extent of the unauthorised use. For the same reason, all references in the requirement should refer to "land" not "Land." The use of the word "Permanently" in the requirements is superfluous.

5. The parties were asked for any comments on the suggested wording and had no objection. I am satisfied that the amendments do not cause injustice to any party. The appellant has been able to present evidence in support of his grounds of appeal and has understood that the allegation relates only to the material change of use part of the land. I will therefore amend the notice accordingly.

The appeal under ground (e)

6. An appeal under ground (e) is that a copy of the enforcement notice has not been served upon all persons required to be served by Section 172 of the Act. Section 172(2) of the Act states 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.

7. Section 176(5) of the 1990 Act then provides that, where it would otherwise be a ground for determining an appeal under section 174 in favour of the appellant that a person required to be served with a copy of the enforcement notice was not served, the Secretary of State may disregard that fact if neither the appellant nor that person has been substantially prejudiced by the failure to serve.

8. The notice was served by the Council upon James Wallace, Wallace Land Investment & Management Limited, the Company Secretary of Datom Civil Engineering, James Park and the appellant Tom Park. The Council had asked the planning agent at the time about persons interested in the land by email. The appellant considers that Datom Electrical Services Limited (Datom Electrical) should have been served with a copy of the notice. The nature of the company's interest is that it has occupied the Land since July 2014 as its registered address is Landywood Farm. Datom Electrical is therefore an occupier of the Land as set out in Paragraph 2 of the notice, but I have to then consider the test of substantial prejudice set out in Section 176(5) of the Act.

9. There is no information before me to indicate how Datom Electrical has any interest in the unauthorised use at the appeal yard which relates to a civil engineering business with a concrete mixing plant. Although the appellant refers to occupation since 2014, the unauthorised use of the appeal yard began in 2019. The extent of the interest of Datom Electrical appears to relate to Landywood Farm itself not the appeal yard. In the absence of any evidence to show that Datom Electrical has been substantially prejudiced by a failure to serve, the ground (e) appeal fails.

The appeal under ground (f)

10. An appeal on ground (f) is that the requirements of the notice exceed what is necessary to achieve its purpose. The purposes of a notice are set out in Section 173 of the Act and are to remedy the breach of planning control or to remedy any injury to amenity. As the requirements include ceasing the use of the appeal site and restoring it back to its condition prior to the breach occurring, the purpose of the notice is to remedy the breach of planning control.

11. The notice has five separate requirements and the appellant considers that requirements (iv) and (v) are excessive to remedy the breach of planning control particularly the removal of boundary treatments, concrete hardstanding and metal gates.

12. The amended requirement (iv) states *'Dismantle and remove from the land indicated in the approximate area shaded green on the plan all precast concrete storage enclosures, stone block storage enclosures, concrete hardstanding and boundary treatments including the 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'.*

13. Case law[1] has established that where a material change of use has occurred and works were carried out to facilitate that change of use, a notice may

[1] Murfitt v SSE& East Cambridgeshire DC [1980] JPL 598

require that those works are removed in order that that the site is restored to its previous condition and the breach is therefore remedied. The extent of works can include works that would otherwise have been immune from enforcement or that was permitted development but was also part and parcel of the unauthorised use.

14. The appellant states that the palisade fencing and gates and hardstanding were used in connection with the agricultural use taking place prior to the breach. No documentary evidence has been produced by the appellant to show that those elements pre- date the breach. The Council has produced "before " and " after" photographs. The earlier photograph shows the entrance to a field with a traditional farm style metal bar gate with hedging to either side forming the site boundary and no hardstanding.

15. The later photographs show the palisade fencing with brick pillars and the hardstanding both at the entrance and within the appeal site. Whilst the earlier photograph dates back to 2011, the appellant has not provided any documentary evidence to support his argument. In addition, the lease terms require the appellant as tenant of the appeal yard to erect a fence and to lay hardstanding. On the evidence before me, the fencing, gates and hardstanding have facilitated the unauthorised change of use.

16. Comparisons are then made by the appellant between the boundary treatments for the appeal site and similar approved boundary treatments for Landywood Farmhouse. However, in the absence of a ground (a) appeal, the planning merits of any part of the development or comparisons with other boundary treatments in the vicinity are not matters for consideration as part of this appeal.

17. Whether or not the existing boundary treatment and hardstanding would be considered to be suitable in connection with agriculture use in the future is a matter of speculation. However even if that had been shown to be the case, case law indicates that the Council can still require the removal of such works where they were installed to facilitate the unauthorised lawful use.[2] The appellant has referred to permitted development rights of 2 metres applying to parts of the fencing. However, limited detail is provided to assess whether permitted development rights apply particularly when the works have in any event facilitated the unauthorised use and the Murfitt principles apply.

18. Requirement (v) as amended states "restore the land indicated in the approximate area shaded green on the Plan) back to its original condition prior to the unauthorised envelopment taking place." Section 173(4) (a) of the Act specifically refers to a purpose of the notice being to restore the land to its condition before the breach took place and that requirement is also not excessive. The requirements iv) and v) are therefore not excessive and the appeal under ground (f) fails.

The appeal under ground (g)

19. An appeal under ground (g) is that the period for compliance is too short. The current period for compliance is 4 months and the appellant considers that 12 months would be more appropriate. Whilst the appellant has referred to Covid restrictions impacting upon the search for a new business location in the past,

[2] Kestrel Hydro VSSLG & Spelthorne BC [2015] 1654 (Admin) [2016] EWCA Civ 784

all restrictions have now been removed. The length of time that it took the Council to refuse the planning application is not a reason to grant a longer compliance period.

20. Although the appellant has indicated that he has been looking for suitable premises to re-locate the business, no details are provided of the extent of the business or number of employees or the distance that the appellant is prepared to consider. The appellant's request for 12 months to find a new location is excessive and the equivalent of a temporary planning permission.

21. The reasons for the notice do include amenity issues for nearby residents including noise and disturbance. The unauthorised use should not be allowed to continue for longer than is necessary, given the impacts of the development upon amenity which is a legitimate concern in the public interest. On the limited evidence before me, a 4 month compliance period does appear to be an appropriate balance between the appellant's relocation plans and the public interest in securing compliance. The appeal under ground (g) therefore fails.

Conclusion

22. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice prior to varying it.

E Griffin

INSPECTOR