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## Appeal Decision

Hearing held and site visit made on 11 October 2016

**by Elizabeth Jones BSc (Hons) MCTP MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 5 December 2016**

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**Appeal Ref: APP/U1620/C/16/3153712**

**Land at Cherry Tree Cottage, Tewkesbury Road, Gloucester GL2 9BE**

- 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 appeal is made by Mr James Gorman against an enforcement notice issued by Gloucester City Council.
  - The enforcement notice was issued on 6 June 2016.
  - The breach of planning control as alleged in the notice is:  
The carrying out of development without planning permission namely:
    - a) The raising of ground levels across the site by the deposit of hardcore, soil and other materials.
    - b) The erection of fencing on and around the site, including the enclosure of land outside of Mr Gorman's ownership (marked in red on plan A) changing the use from public amenity land to residential curtilage.
    - c) The creation of 2 separate planning units caused by the subdivision of the land, as marked 'A' and 'B' on the attached plan.
    - d) On land 'A' works to erect a dwelling house. While outline planning permission was given for the erection of a detached dwelling house on the 14<sup>th</sup> October 2009, with reserved matters approved on the 10<sup>th</sup> March 2011, the following conditions were not complied with;
      - No development shall take place until details or samples of materials to be used externally have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
      - The development shall not take place until details of all boundary treatments and means of enclosure to the development have been submitted to and approved in writing by the local planning authority and the details so approved shall be implemented before the occupation of any part of the development.No details were submitted before the expiry date of the permission on the 14<sup>th</sup> October 2014 and works then commenced.
    - e) On land 'B' the stationing of a mobile home being used as an independent unit of accommodation.
    - f) The erection of 2 outbuildings on the site, as marked on Plan A as 'C' and 'D'.
  - The requirements of the notice are:
    - Permanently remove all materials used in the construction of the dwelling house and put land back to condition before works commenced.
    - Permanently cease the use of the land for the siting of any mobile home stationed for the purposes of providing residential accommodation.
    - Permanently remove from the land the mobile home and all materials used in connection with the siting and use of the mobile home to an authorised location.
    - Reinstate the ground levels throughout the site in line with the levels on the enclosed plan labelled 'Plan B' that was submitted as part of planning application 11/00038/REM, reference No.3401s. All materials removed are to be taken to an authorised location of disposal or storage.
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- Permanently remove all fencing from the site.
  - Permanently remove all outbuildings and remaining materials from the site.
  - The period for compliance with the requirements is 6 months.
  - The appeal is proceeding on the grounds set out in section 174(2) (e), (b), (c), (a) and (g) of the Town and Country Planning Act 1990 as amended.
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## **Decision**

1. The appeal is allowed and the enforcement notice is quashed.

## **Application for costs**

2. At the Hearing an application for costs was made by Mr James Gorman against Gloucester City Council. This application will be the subject of a separate Decision.

## **Preliminary matters**

3. The Council's letter dated 29 October 2016 giving the date and notification of the hearing was given to local residents less than two weeks before the date of the hearing. Two local residents attended the hearing and a number attended the site visit. I agree with both the main parties that the interests of no interested party would have been prejudiced due to inadequate notification of the hearing.

## **Appeal on ground (e)**

4. Ground (e) is concerned with whether a copy of the enforcement notice was properly served as required by section 172(2) of the 1990 Act. This provides that a copy of an enforcement notice shall be served (a) on the owner and on the occupier of the land to which it relates; and (b) 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. The appellant maintains that whilst he received a copy of the notice, the owner of an area of land to which it relates and identified marked hatched on Plan C 'Location Plan' did not and their interests have been substantially prejudiced as a result. In a ground (e) appeal the burden of proof is firmly on the appellant and the test is the balance of probability.
5. A Land Registry search<sup>1</sup> undertaken by the appellant revealed Basilica Ltd, c/o Messrs Davies and Partners, Rowan House, Barnett Way, Barnwood, Gloucester GL4 7RT to be the registered freehold owner of the area of land indicated marked hatched on Plan C 'Location Plan'.
6. The notice was served on Carmell Gorman as one of the occupiers of the land, David Bevan as the appellant's legal representative and the appellant as the owner. The Council accepts that Basilica Ltd was not served.
7. Section 176(5) of the Act allows me to disregard any failure to serve the notice provided that neither the appellant nor the person concerned (which includes a company) has been substantially prejudiced by the failure.
8. The appellant contends that as a landowner Basilica Ltd has some criminal liability in the service of the enforcement notice and the failure to serve the notice has substantially prejudiced Basilica Ltd as owner.

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<sup>1</sup> Appendix L of Appellant's statement.

9. Paragraph 3. b) of the notice states "including the enclosure of land outside of Mr Gorman's ownership". Thus, at the time the notice was issued the Council would have been aware that someone else owned land to which the notice related. In addition, the Council accepts that prior to issuing the notice it did not seek further information through the issue of a planning contravention notice despite being aware that an area of land to which the notice relates was outside the appellant's ownership.
10. At the hearing the Council argued that the bulk of activity taking place on this area of land had been the clearance of scrub materials and therefore Basilica Ltd had not been substantially prejudiced. However, the appellant indicated that at least two of the alleged breaches in Paragraph 3 of the notice refer to the land owned by Basilica Ltd. In addition, it was evident at the site visit that more than just the clearance of shrub had taken place on this land. The land was being used for residential purposes by the appellant. The land level had been raised, a section of the land gravelled and a further section grassed and in use as a garden.
11. Effective service could also have taken place by addressing a copy of the notice to 'the occupier' without providing a name and affixing it conspicuously to some object on those premises, as provided by section 329(2). The Council did not use this method and the appellant does not recall a notice on display. I can only conclude that this form of service was not used.
12. It was the Council's responsibility to ensure that copies were served on all persons required by the statutory requirements. There was an owner of an area of the land being attacked by the notice that was not served in accordance with the requirements and there is no evidence to indicate that this company is aware of the existence of the notice.
13. Clearly, Basilica Ltd is directly affected by the notice and natural justice dictates that it should be afforded opportunity to respond. In the absence of service upon this owner, it seems to me that on the balance of probabilities substantial prejudice has been caused by the failure to serve it with a copy of the notice. Therefore, this is not a case where it would be appropriate for me to disregard the non-service under section 176(5) of the Act.
14. The appellant contends that the notice should not have been served on David Bevan because as the appellant's Planning Agent he is not the owner or occupier of the land to which the notice relates, neither is he a person having an interest in the land who is materially affected by the notice. Although the Council acknowledge that it would have been preferable to have sent Mr Bevan a copy of the notice rather than formal service, it was agreed by Mr Bevan at the hearing that he has not been substantially prejudiced by the Council's actions in this regard.
15. For the reasons given above, I conclude that the owner Basilica Ltd, c/o Messrs Davies and Partners, Rowan House, Gloucester GL4 7RT have been substantially prejudiced by the non-service of the enforcement notice and that this is not a case where I can exercise the power to disregard that non-service in accordance with section 176(5) of the 1990 Act as amended. The appeal under ground (e) therefore succeeds. I will exercise the powers transferred to me accordingly and the appeal under the various grounds as set out in section 174(2) of the 1990 Act, and the application for planning permission deemed to

have been made under section 177(5) of the 1990 Act as amended do not fall to be considered.

*Elizabeth Jones*

INSPECTOR

## **APPEARANCES**

### FOR THE APPELLANT:

|             |                                                       |
|-------------|-------------------------------------------------------|
| Mr J Gorman | Appellant                                             |
| Mr J Payne  | LSL Solicitors, Prama House, 267 Banbury Road, Oxford |
| Mr D Bevan  | Agent                                                 |

### FOR THE LOCAL PLANNING AUTHORITY:

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|----------------|------------------------------------------------------|
| Mr J Sutcliffe | Development Control Manager, Gloucester City Council |
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### INTERESTED PERSONS

|               |                |
|---------------|----------------|
| Mr T Williams | Local Resident |
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## **DOCUMENTS**

1. Plan C, Site Location Plan 1:1250.
2. A1 copy of Drawing No 3401s.
3. Copy of Policy BE.7 Gloucester City Council Revised Deposit Local Plan (2002).
4. Transcript of *Agecrest Ltd v Gwynedd Council* 1995 – NJ-1191.