
Appeal Decision

Inquiry held on 18 January 2017

Unaccompanied site visits made on 17 & 18 January 2017

by Tim Belcher FCII, LLB (Hons), Solicitor (Non-Practising)

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

Decision date: 24 January 2017

Appeal Ref: APP/W4705/C/16/3150672

Land at Back Prospect Place, Keighley, BD21 1PF

- 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 1990 Act").
 - The appeal is made by Aslam Khan also known as Faizul Islam Aslam ("the Appellant") against an Enforcement Notice issued by the City of Bradford Metropolitan District Council ("the Council").
 - The Enforcement Notice, numbered 16/00070/APPENF, was issued on 22 March 2016.
 - The breach of planning control as alleged in the Enforcement Notice is without planning permission the unauthorised material change of use of the land to use for the storage of two metal storage containers.
 - The requirements of the Enforcement Notice are: (i) Cease the unauthorised material change of use. (ii) Remove the two metal storage containers from the land.
 - The period for compliance with the requirements is one calendar month.
 - The appeal is proceeding on the grounds set out in Section 174(2)(d) of the 1990 Act.
- Summary of Decision:** The appeal succeeds in respect of the one of the metal containers. To give effect to this decision the Enforcement Notice is corrected and varied as set out in the Formal Decision below
-

Procedural Matters

1. The onus of proof in a case like this rests with the Appellant. He has to show that at the date when the Enforcement Notice was issued, no enforcement action could be taken in respect of the breach of planning control alleged in the Enforcement Notice. The Appellant has to prove this on the balance of probabilities i.e. is it more likely than not that the storage containers have been on the site identified in the Enforcement Notice ("the Appeal Site") since 22 March 2006 and have remained there throughout the relevant period up to the date when the Enforcement Notice was issued.
2. All oral evidence at the Inquiry was given on oath.
3. The Appellant is the proprietor of a business known as Fair Deal Beds & Furniture ("the Business"). The Business is run from premises that front onto Back Prospect Place ("the Premises"). Adjoining the Premises is a small car parking area ("the Car Park").
4. There are two metal containers within the Appeal Site that are resting on the surface of Back Prospect Place. The metal containers are used to store goods that are sold from the Premises. The Appellant accepts that the container near the entrance to the Car Park has not been there for sufficient time for it to be immune from enforcement action. Therefore the Ground (d) appeal must fail in respect of that storage container.

5. The Appellant explained that he needed more than one month i.e. the current compliance period to find a place where he can store the goods which are, or would be, stored in the container that has to be removed pursuant to the Enforcement Notice. Whilst the Appellant had not formally appealed the Enforcement Notice on Ground (g) the Council accepted that they could deal with this matter at the Inquiry without any need for a formal adjournment. The Appellant stated that three months would be an appropriate period to secure alternative storage and the Council agreed to that period being substituted as the period for compliance with the Enforcement Notice. I explained to the Appellant that if he was unable to find alternative storage within the three month period he should, with the relevant supporting evidence, contact the Council as they have powers to further extend the period for compliance.
6. It was agreed at the Inquiry that if the metal container furthest away from the Premises ("the Metal Container") had been stationed on the Appeal Site on or before the 22 March 2006 and had remained there throughout the relevant 10 year period then it was too late for the Council to take enforcement action and the Appellant's appeal on Ground (d) would succeed.

Reasons

Ground (d) Appeal

7. In 1998 the Appellant commenced the Business from part of the Premises. The Business has expanded over the years and the extent of the Premises used has increased. It soon became clear to the Appellant that he needed additional storage space for mattresses, beds and other furniture sold from the Premises.
8. The Appellant claims that the Metal Container was placed on Back Prospect Place within the Appeal Site in 2000 to provide the additional storage space required by the Business. He is now sure that the Metal Container arrived in 2000 as this was the millennium year.
9. The Appellant was unable to produce any documentation relating to the purchase of the Metal Container from Ace Container Services Limited ("Ace").
10. The Appellant provided a copy of a Sales Invoice dated 14 August 2000 from ABH Locksmiths ("ABH")¹. The Appellant explained that ABH had carried out work to the Metal Container as the shutter lock had been glued and the Appellant was unable to open and thus use the Metal Container. I consider that this Sales Invoice is significant because it indicates to me that the Metal Container was at the Appeal Site in August 2000.
11. In 2004 or 2005 the Appellant was finding that there was fly-tipping taking place in Back Prospect Place which was causing him a nuisance. He contacted the Highways Department at the Council to discuss what could be done to resolve this issue.
12. The Appellant met John Robinson who worked for the Council in their Highways Department. The Appellant claimed that John Robinson was aware that the Metal Container was placed on the carriageway of Back Prospect Place but raised no issue about it being on the public highway. It was suggested by the Highways Department that the Appellant could install a barrier over part of

¹ Document 11

- Back Prospect Place to stop the fly-tippers getting access to that part of Back Prospect Place where they were dumping their rubbish.
13. In January 2005 the Council granted a licence pursuant to Section 177 of the Highways Act 1980 to erect a barrier over part of Back Prospect Place. However, the Appellant decided not to proceed with the "barrier" project.
 14. In March 2011 an Enforcement Officer visited and photographed the Appeal Site. A letter from the Council dated 18 April 2011 was sent to the Appellant requiring:
 - a) That evidence be provided to show that the containers in Back Prospect Place had been on the Appeal Site for at least ten years.
 - b) Or that an application be made for planning permission for the continued use of the Appeal Site for the stationing of the metal containers.
 - c) Or that the containers be removed from the Appeal Site.
 15. In the course of gathering evidence the Appellant contacted John S. Feather Ltd ("John Feather") who had carried out work to the Metal Container. On the 18 May 2011 John Feather wrote a letter stating that they had "carried out some repairs" to the Metal Container for Fair Deal Beds. This work was carried out "four years ago at least" i.e. on or before the 18 May 2007.
 16. The Appellant explained that the works carried out by John Feather were not "repairs" in the sense of making good damage to the Metal Container but involved providing ventilation holes (one to the front and one to the side) of the Metal Container. This was done because the Appellant was concerned that one of his children may get accidentally locked in the Metal Container and the Appellant wanted to ensure that there was no risk of suffocation. The Appellant's son had contacted John Feather on 16 January 2017 and they recalled that the "repair" work was, in fact, the provision of the air vents. I noted the position of the air vents at one of my site visits.
 17. The Appellant also contacted Ace to obtain documentation as to his purchase of the Metal Container. They also wrote to the Appellant on 18 May 2011 stating that they are unable to provide a duplicate of the purchase / delivery invoice for the Metal Container. They explained that they were only required to keep records for a maximum of seven years and because the Appellant's purchase was "quite some time prior to this" they no longer held the account records. This suggests to me that the Appellant purchased the Metal Container from Ace well before the 18 May 2004.
 18. The Council wrote to the Appellant on 20 June 2011 stating that if he could show that the metal containers had been continuously on the Appeal Site for at least ten years then he could make an application for a Certificate of Lawful Use.
 19. On 4 July 2011 Azeem Khan (a local resident) swore a statutory declaration². In his statutory declaration Azeem Khan explained that his home overlooked Back Prospect Place and that the Metal Container had been in place since 2000.
 20. Also on 4 July 2011 Paul Hudson (another local resident) swore a statutory declaration³. In his statutory declaration Paul Hudson likewise explained that

² Document 3

his home overlooked Back Prospect Place and that the Metal Container had been in place since 2000.

21. In July 2011 an agent acting for the Appellant wrote to the Council's Enforcement Officer and provided information regarding the metal containers in Back Prospect Place.
22. Another Council Enforcement Officer visited the Appeal Site in November 2015 and observed that the metal containers remained stationed on the surface of Back Prospect Place.
23. The Appellant recalled having a conversation with a female Enforcement Officer who seemed to be unaware of the previous Council investigations in 2011. The Appellant explained that his agent had written to the Council about this issue and the length of time that the containers had been in Back Prospect Place.
24. As far as the Appellant is aware the last written communication between himself/his agent and the Council was that referred to in paragraph 21 above.
25. The Council agreed that their aerial photographs dated 2006 and 2010 show the Metal Container on the highway in Back Prospect Place in its current position. I asked the Council whether they were able to state on what date the 2006 aerial photograph was taken. They were unable to do that. Given the foliage on the trees I consider, on the balance of probabilities that it would have been after 22 March 2006.
26. The Appellant also provided letters from local residents which stated:
 - a) "to my knowledge, one container painted green has been there roughly 14-15 years". The letter was dated 14 January 2017⁴. Accordingly the writer of this letter indicates that the Metal Container has been at the Appeal Site since 2002 or 2003.
 - b) "to my knowledge the container has been here over 15 years and never been replaced or changed". The letter was dated 4 January 2017⁵. Accordingly, the writer of this letter indicates that the Metal Container has been at the Appeal Site since 2002.
 - c) "I have been in my business for 13 years and I can confirm the container has been there since then as I walk past pretty much every day to go the sandwich shop." The letter was dated 12 January 2017⁶. Accordingly, the writer of this letter indicates that the Metal Container has been at the Appeal Site since at least 2004.
 - d) "The containers there have been at least 15 years plus". The letter was dated 12 January 2017⁷. Accordingly, the writer of this letter indicates that the Metal Container has been at the Appeal Site since at least 2002.
27. The Council produced an aerial photograph dated 2002. The quality of the photograph is poor. The Appellant claims that this photograph shows the Metal Container. The Officer representing the Council at the Inquiry could not be absolutely sure that no Metal Container was shown on this photo. I agree with

³ Document 4

⁴ Document 6

⁵ Document 7

⁶ Document 9

⁷ Document 10

the Council Officer that it is very difficult to be sure whether the photograph shows the Metal Container.

Conclusion on Ground (d)

28. I have had regard to all of the evidence that is before me. On the balance of probabilities I conclude that the Metal Container was on the Appeal Site prior to 22 March 2006 and remained there throughout the relevant period. On the basis of the evidence set out above I conclude that the appeal, so far as it relates to the Metal Container, should succeed on Ground (d).
29. So as to achieve my decision I intend to amend the Enforcement Notice in the following ways:
- a) Amend the allegation so that it only relates to the container on the surface of Back Prospect Place near the entrance to the Car Park.
 - b) Amend paragraph 5 (ii) to reflect the amended allegation.
 - c) Amend paragraph 6 by allowing three months as the time for compliance.

Formal Decision

30. It is directed that the Enforcement Notice be corrected and varied by:
- a) The deletion of the words in paragraph 3 and the substitution of the words, "Without planning permission the use of the land for the storage of a metal storage container stationed on the surface of Back Prospect Place close to the entrance to the car park at Unit 2 Back Prospect Place ("the Container")".
 - b) The deletion of the words "two metal storage containers" in paragraph 5(ii) and the substitution of the word "Container".
 - c) The deletion of the words "One calendar month" in paragraph 6 and the substitution of the words "Three months".

Subject to these corrections and variations the appeal is dismissed and the Enforcement Notice is upheld.

Tim Belcher

Inspector

APPEARANCES

FOR THE APPELLANT

Aleem Khan	Appellant's Son
Aslam Khan	Appellant

FOR THE COUNCIL

Robert Wade He called:	Senior Lawyer with the Council
Arshid Zaman MA (Town and Regional Planning), MRTPI	Development Control Planning Officer

DOCUMENTS

Document 1	–	Letter dated 17 July 2016 from D. Hartley – Farish House.
Document 2	–	Undated letter from Azeem Khan – 23 Portland Court.
Document 3	–	Statutory declaration dated 4 July 2011 – Azeem Khan.
Document 4	–	Statutory declaration dated 4 July 2011 – Paul Hudson.
Document 5	–	Letter dated 10 January 2017 from WYL Estate Agents.
Document 6	–	Letter dated 10 January 2017 from W. Greig – 36 A629.
Document 7	–	Letter dated 4 January 2017 from The Occupier of 51 Farish House.
Document 8	–	Letter dated 18 May 2011 from John S. Feather Ltd.
Document 9	–	Letter dated 12 January 2017 from Al Murad – Goulbourne Street, Keighley.
Document 10	–	Letter dated 12 January 2017 from Oakworth Trading Co. Ltd.
Document 11	–	Sales Invoice dated 14 August 2000 from ABH Locksmiths.
Document 12	–	Letter dated 14 January 2017 from Springfield Flooring.
Document 13	–	Compliments Slip – John Robinson (Council Officer) – 2004/2005.

PHOTOGRAPHS

- Photograph 1 – Back Prospect Place.
- Photograph 2 – Open container near the Car Park.
- Photograph 3 – Open container near the Car Park.
- Photograph 4 – Premises (part) in 1998.
- Photograph 5 – Premises (part) interior.
- Photograph 6 – Premises (part) offices & interior.
- Photograph 7 – Premises (part) exterior.
- Photograph 8 – Back Prospect Place (part).

- Photograph 9 – Containers – taken from footpath.
- Photograph 10 – Van – rubbish bin - container.
- Photograph 11 – Van – rubbish bin - container.
- Photograph 12 – Back Prospect Place.
- Photograph 13 – Back Prospect Place – taken from South Street.
- Photograph 14 – Back Prospect Place – taken from South Street.
- Photograph 15 – Premises (part) interior.
- Photograph 16 – Back Prospect Place.
- Photograph 17 – Other nearby metal containers.
- Photograph 18 – Other nearby metal containers.