
Appeal Decision

Inquiry held and site visit made on 14 February 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: 21 February 2017

Appeal Ref: APP/P3420/C/16/3144778

Land off Hollywood Lane near Pepper Street, Keele, Newcastle-under-Lyme, ST5 5AQ

- 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 Kevin Broad ("the Appellant") against an Enforcement Notice issued by Newcastle-Under-Lyme Borough Council ("the Council").
- The Enforcement Notice, numbered 16/00004/ENFNOT, was issued on 11 January 2016.
- The breach of planning control as alleged in the Enforcement Notice is without planning permission, the change of use of the land from B2 to C3 use, that is, for residential purposes, including the siting of a caravan and incidental development consisting of shipping container, and wooden structures in connection with the unauthorised change of use.
- The requirements of the Enforcement Notice are: (i) Cease the use of the Land for C3 purposes, that is, use for residential purposes. (ii) Remove the caravan, the shipping container, all wooden structures, the satellite dish, television aerial, lighting used in connection with the residential use and any other residential paraphernalia from the Land. (iii) Remove any fencing erected on the perimeter of the land edged in red on the plan attached to the Enforcement Notice.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in Section 174(2)(c), (d) & (g) of the 1990 Act.

Summary of Decision: The appeal is dismissed and the Enforcement Notice is upheld with corrections.

Procedural Matters

1. I will refer in this Appeal Decision to the land and buildings to which the Enforcement Notice relates as "the Appeal Site".
2. All oral evidence at the Inquiry was given on oath.
3. At the commencement of the Inquiry the Council raised the issue of whether the Appellant had a statutory right to appeal the Enforcement Notice.
4. The Appellant's appeal on Ground (c) was withdrawn near the beginning of the Inquiry.
5. It was agreed at the Inquiry that the appeal on Ground (d) would succeed if the Appellant could show on the balance of probabilities that he had lived in a motor home or caravan on the Appeal Site on or before the 11 January 2006 ("the Relevant Date") and that the residential use had continued throughout the period between 11 January 2006 and 11 January 2016. The onus of proof rests with the Appellant.

6. The breach of planning control as alleged in the Enforcement Notice is stated in bullet point 4 above. It was agreed at the Inquiry that the current use is not a use falling within Use Class C3 and therefore the alleged breach of planning control required amendment. As a consequence of such a change the first requirement of the Enforcement Notice would also need to be amended. It was also agreed that there is no fencing erected on the perimeter of the Appeal Site which facilitates the residential use but there is clearly fencing within the Appeal Site that has been erected to ensure, amongst other things, that the Appellant's animals do not escape. I consider that the wording of the requirements should be amended to reflect this. It was agreed at the Inquiry that all of these matters could be corrected without injustice to the Appellant or the Council.

Relevant Background Matters

7. Jeff Banks occupied the Appeal Site as a tenant. He used it, amongst other things, for business purposes including the storage and distribution of wooden pallets and the parking and storage of associated HGVs and trailers ("the Business Use"). This Business Use was known as Audley Timber.
8. Jeff Banks's use of the Appeal Site commenced at some point in the 1990s and continued until about 2013 or 2014.
9. I was informed that the owners of the Appeal Site during Jeff Banks' occupation were Mr Chell and Mr Riley.
10. The Appellant commenced working at the Appeal Site in about 2002.
11. The Appellant moved onto the Appeal Site at some point during 2006 together with his motor home. He lived in his motor home on the Appeal Site or on land adjoining. He explained that he would drive the motor home off the Appeal Site from time to time but he was unable to say with any precision how often that would happen.
12. On 5 January 2006 (just 6 days before the Relevant Date) Council Officers inspected the Appeal Site and adjoining land to check whether Enforcement Notices issued in July 2003 has been complied with. Photographs were taken and whilst those photographs do not cover the whole of the Appeal Site there is no indication of a motor home being on the Appeal Site at that time. Further still, the Officer who made a statement about the site visit made no reference to any residential use being carried on.
13. On 1 February 2006 the same Council Officer carried out a further inspection of the Appeal Site and adjoining land in connection with the 2003 Enforcement Notices. Again no reference was made to any residential use taking place at the Appeal Site.
14. The Council produced an aerial photograph dated 2006. It is clear from the vegetation on the trees that this photograph was taken after the Relevant Date. The Appellant pointed out what he said was his motor home. It is shown parked to the north of the container.
15. The Appellant stated that Jeff Banks, Mr Chell and Mr Riley all gave him permission to live in the motor home on the Appeal Site. There is no evidence before me to contradict this claim.

16. Jeff Banks wrote an undated letter which was sent by the Appellant to the Council in 2016. In this letter Jeff Banks states he was the “boss of Audley Timbers”. He stated that the Appellant had:
 - i) Worked at Audley Timber for 15 years.
 - ii) Lived there for 11 years.
 - iii) Had a container and caravan delivered there 11 years ago.
17. Comment: Jeff Banks’s letter did not provide any specific dates as to the events referred to in paragraph 16 above. Further, the Appellant’s own evidence was that he initially lived in a motor home – not a caravan.
18. Jeff Banks did not attend the Inquiry and I give limited weight to the contents of his letter.
19. The Council produced an aerial photograph dated 19 May 2008. The Appellant confirmed that his motor home was not within the Appeal Site or on adjoining land. The position occupied by the motor home in the 2006 aerial photograph was being actively used in connection with the Business Use.
20. The Appellant’s motor home was destroyed by fire in about May 2010. The Appellant replaced the destroyed motor home with a caravan in July 2010.
21. The Council produced another aerial photograph taken in 2010. The Appellant explained that a blackened area outside the Appeal Site was the position where the motor home was when it was destroyed by fire. The Appellant explained that he kept his newly acquired caravan within the building on the Appeal Site (“the Building”) and therefore it was out of view of any aerial photography.
22. The Appellant stated that he moved the caravan out of the Building in January 2012.
23. An aerial photograph dated 2012 was provided by the current owners of the Appeal Site, namely Keele Homes Limited. That photograph was taken after January 2012 as can clearly be seen by reason of the leaves on the trees growing near the Appeal Site. There is no residential caravan featured within the Appeal Site on that photograph.
24. In 2013 Keele Homes Limited submitted an application for outline planning permission for residential development on the Appeal Site and the adjoining land for a maximum of 100 houses (“the Proposed Development”).
25. At some point in 2013 or 2014 the Business Use on the Appeal Site and adjoining land terminated and Jeff Banks’ interest in the Appeal Site also came to an end.
26. The Appellant stated at the Inquiry that he was given permission to stay on the Appeal Site by Keele Homes Limited. He confirmed that:
 - a) He did not occupy the Appeal Site pursuant to any formal Tenancy Agreement.
 - b) He had no written permission from anyone to occupy the Appeal Site.
 - c) He did not pay rent to anyone to live on the Appeal Site.

- d) He did not pay any Council Tax.
 - e) The caravan belongs to him and not Keele Homes Limited as claimed in their agents' letter of 31 January 2017.
27. The Council became aware of the Appellant's residential use on the Appeal Site in April 2014.
28. In the summer of 2014 the Appeal Site was purchased by Keele Homes Limited. I do not know why vacant possession was not sought by Keele Homes Limited at the time of their purchase.
29. In April 2015 outline planning permission was granted for the Proposed Development.
30. In January 2017 agents for Keele Homes Limited wrote to the Planning Inspectorate and stated that:
- a) The Appellant occupies the Appeal Site without the express permission of Keele Homes Limited and was therefore trespassing on their land.
 - b) They have not commenced any legal proceedings to secure vacant possession of that part of the Appeal Site occupied by the Appellant.
31. Keele Homes Limited did not attend the Inquiry to give evidence. Accordingly, it was not possible for the Appellant to cross-examine Keele Homes Limited on their claims.

Does the Appellant have a Right to Appeal the Enforcement Notice?

32. When the appeal was lodged the Appellant described his interest in the Appeal Site as a "Tenant". There is no definition in the 1990 Act as to what a tenant is. I have taken it to mean any person who holds land belonging to another. The fact that rent is not paid and that there is no formal Tenancy Agreement regulating the conduct of the Appellant or the owner does not, in my assessment, preclude the Appellant from being a tenant.
33. The evidence of the Appellant was given on oath. He stated that he initially occupied the land with the permission of Jeff Banks and the then owners. When Jeff Banks's interest in the Appeal Site came to an end the Appellant stated that he had the permission of the owners at the time to continue living at the Appeal Site. There was no evidence on oath before me that the Appellant's claims regarding permission to occupy the Appeal Site were untrue.
34. In these circumstances and on the balance of probabilities I conclude that the Appellant does have an interest in the Appeal Site and therefore he is entitled to appeal the Enforcement Notice.

Ground (d) that at the date when the Enforcement Notice was issued, no enforcement action could be taken in respect of any breach of planning control

35. I have explained above what this Grounds of Appeal entails in this case and where the onus of proof lies.
36. In my judgement the Appellant has failed to show, on the balance of probabilities that he was living in either a motor home or caravan on or before the Relevant Date. There is simply no evidence to support such an argument. The best case for the Appellant is that he commenced living on the Appeal Site

in his motor home at some point in 2006 but he was unable to confirm with any precision a date when that residential use commenced.

37. The Appellant called a friend who lives within two miles of the Appeal Site and who worked from time to time for Jeff Banks as a night-watchman at the Appeal Site. His evidence did not provide any clarity as to when the Appellant first occupied part of the Appeal Site in his residential motor home.
38. I therefore conclude that the Appellant has failed to demonstrate that the residential use commenced on or before the Relevant Date. Accordingly, the appeal on Ground (d) must fail.

Ground (g) that the period specified in the Enforcement Notice falls short of what should reasonably be allowed.

39. The Appellant occupies the caravan with his partner. The Appellant does not work. The Appellant and his partner have a pig and a dozen hens living at the Appeal Site. I was informed that these are akin to pets rather than livestock.
40. The Appellant explained that there are vacancies on a nearby caravan site albeit that the site is only open 10 months a year. I am aware that the Appellant would not be able to take his pets to this site.
41. However, there is no convincing evidence before me that the six month period for compliance with the Enforcement Notice falls short of what time is reasonably required to make alternative arrangements for the Appellant and his partner to find alternative accommodation and it make provision for the on-going care of their animals. The appeal on Ground (g) therefore fails.

Overall Conclusion

42. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the Enforcement Notice with the corrections explained above.

Formal Decision

43. It is directed that the Enforcement Notice be corrected by:
- a) The deletion of the words in paragraph 3 and the substitution of the words, "Without planning permission, the change of use of the Land from B2 to residential use, including the siting of a caravan and incidental development consisting of the stationing of a shipping container and the erection of wooden structures in connection with the residential use."
 - b) The deletion of the words in paragraph 5(i) and the substitution of the words, "cease the residential use of the Land."
 - c) The deletion of the words in paragraph 5(iii) and the substitution of the words, "remove the fencing erected on the Land that facilitates its residential use."

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

Tim Belcher - **Inspector**

FOR THE APPELLANT

Kevin Broad

The Appellant

John Breeze

Local resident and friend of the
Appellant

FOR THE COUNCIL

Trevor Vernon
He called:

Solicitor/Advocate

Elaine Moulton BA(Hons), B(Plan), MRTPI

Development Management Team
Leader

DOCUMENTS

Document 1 – Part of a Section 106 Agreement dated 2 April 2015.

Document 2 – Office Copy Entries – Land including the Appeal Site.