



Appeal Decisions

Inquiry Held on 4 April 2018

Site visit made on 3 April 2018

by Simon Hand MA

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

Decision date: 9 April 2018

Appeal Ref: APP/C3430/C/17/3179253 & 3179254 & 3179255
Land and premises at land on the south-west side of Bridgnorth Road, Wombourne, Wolverhampton, South Staffordshire, WV5 8AY

- 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 John Anthony Cumiskey against an enforcement notice issued by South Staffordshire Council.
 - The enforcement notice was issued on 6 June 2017.
 - The breach of planning control as alleged in the notice is without planning permission the unauthorised change of use of the land as a car park and for deliveries.
 - The requirements of the notice are 1. Cease the use of land as a car park and for deliveries, as outlined in red on the attached plan; 2. Remove all vehicles off the land outlined in red on the attached plan; 3. Remove all signage relating to the unauthorised use from the land outline in red on the attached plan; 4. Dispose of all waste generated from the removal of the signs in the correct manner.
 - The period for compliance with the requirements is 2 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (d) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeals are allowed and the enforcement notice is quashed.

Preliminary Matters

2. Identical appeals have been made by Mr John Cumiskey (3179254) and Mrs Winifred Cumiskey (3179255) and these are all dealt with together in this decision.

Background to the Appeals

3. The site lies on the south side of Bridgnorth Road on a reasonably sharp bend where it crosses a brook. On the north side of the road is the appellant's business, a funeral home, to the west and north of which are various industrial and commercial units. To the east is housing and to the south east more industrial units. The brook is in a small valley and this and the land around the appeal site represent a small area of green on the edge of an otherwise built up urban landscape. The site lies in the green belt and is part of a larger area of land owned by the appellant. The site itself has been used for some time for car parking and some storage associated with the funeral home business. The

storage uses would seem to have been some time in the past and the current use is as described in the notice as parking and deliveries.

The Appeal on Ground (d)

4. This ground is that the matters alleged are immune from enforcement action because, in this case, they have been going on for 10 years or more prior to the issue of the notice. The start date for the 10 year period is the 6 June 2007.
5. Firstly I should deal with the issue of ownership. The appellant and his family have occupied the land for many years and in 2015 made an application to the Land Registry that they had been in adverse possession of the land for the required 12 years. This was accepted and they are now the registered owners. The County Council as highways authority however, are under the impression the land has been dedicated to them for possible highway improvements to Bridgnorth Road. There has been a long history of works to improve the road and the bridge over the stream to prevent flooding, involving small parcels of land being given by the appellant and his family to the County Council which I do not need to go into. Now, the County Council consider further improvements are unlikely and so do not oppose the appeal as they are prepared to give up the land. It was agreed at the Inquiry, that this matter could be left as a private issue between the parties involved and was not relevant to the outcome of this appeal.
6. The appellant provided statutory declarations from himself, his parents, who were also involved in the running of the business for many years, and a former employee. He also gave evidence to the inquiry under oath. All this evidence was consistent with the claim that the use for parking began in the late 1990s and has continued to this day. The site is accessed from a hammerhead turn-in that was constructed by the County Council in 2001/02 during one of the periodic bouts of roadworks. The site was used again by the County for storage of plant and machinery during road works in 2003 and 2007. Mr Cumiskey described the use of the site in some detail. It had always been used for overflow parking and had a gravel hardstanding put down to facilitate that use. The gravel was topped up from time to time as it became overgrown with grass and a moss type plant that made it slippery. The use in the early years was sporadic but increased as the business grew. The appellant and his family also owned a bungalow behind the funeral home, No 124A, from which they operated a stonemasonry business, this declined over the years as the funeral business grew and the bungalow and land were sold about 10 years ago. The bungalow site was also used for parking until the sale, and the use of the appeal site intensified from then on.
7. The adverse possession evidence provided to the Land Registry is in accord with this outline, that the appeal site has been used as a car park and the wider land has been maintained by tree planting, cutting and logging and that signs indicating the use have also been in place.
8. In essence it seems to me that none of this is in dispute. If the appellant's oral and written evidence is cogent and convincing then it ought to suffice unless challenged by counter evidence that throws doubt on it. However, the Council argue firstly that there are several pieces of evidence that suggest there were significant breaks in the use of the site and secondly that at best in the early

years of the 10 year period the use was sporadic and insufficient to establish a material change of use had taken place.

9. In my view however, the appellant has a reasonable explanation for the "counter evidence" as it was called. Firstly there was an application made in 2011 for a "proposed" car park which was submitted with a DAS which described the site as overgrown and recently cleared of rubbish. On its face this would seem to suggest that at that time there was no use of the land for car parking.
10. The appellant explained that the Council had noticed one of the periodic re-gravellings of the land and realised there was an unauthorised use going on. They suggested to the appellant he should put in an application to regularise the situation. The appellant took advice from an architect who put in the application for the proposed use. The appellant said he did not know about an LDC and it seems that one was not considered at the time. Hence the description was technically accurate as the lawful use was proposed. The DAS was describing the whole area of land of which the car parking element was only a small part. This larger area was occasionally cleared by the appellant and the scrub kept under control in the same way that the hardstanding on the car park was occasionally topped up with more gravel. I also note the DAS described the post and rail fence around the site as "proposed" but it is clear from the officer's report and aerial photographs that this had been in place for many years so the use of the word "proposed" would not seem to be indicative of what actually was on the site.
11. This explanation seems sensible to me. It suggests that far from there being a break in the use it was actually because the use was ongoing that the Council were alerted to it. Otherwise there would have been no reason to make an application in 2011 for a change of use of land in the green belt as there was always a strong likelihood it would not succeed.
12. The Council also referred to notes made by their officer when visiting the site for the application site visit. These made it clear there was no car parking use. However, these notes could not be found and the Council accepted that I should attach no weight to them.
13. There were also a number of aerial photographs from 2006, 2007 and 2011. It is difficult to draw any firm conclusions from these. They all show the hammerhead turning and the fencing and there is clearly a gravelled area behind the gateway into the site. In 2006 the site itself does look as if it is covered in hardcore of some sort, but as the Council's witness pointed out it could just be dead grass similar to the nearby verges also shown in the photograph. The 2007 photograph does show the main parking area to be green, but it is also crossed by clear tyre tracks. The 2011 photograph is blurry but seems to show a slightly larger area of gravel by the gate but the rest of the site is green. The wider area of land owned by the appellant is consistently shown as overgrown with bushes and trees, which does suggest the car park area was being used differently. The appellant has maintained throughout that the gravel was regularly overgrown and had to be replenished and this would seem to be consistent with the photographic evidence. There is certainly nothing in the photographs to suggest the land could not be used for parking.

14. It was pointed out that none of the photographs showed any vehicles parked on the site, but they represent only 3 snapshots in time. One was taken on a Sunday when the car park was likely to be empty anyway so I do not consider that anything can be read into the lack of vehicles.
15. In my view therefore the "counter evidence" does not contradict the version of event described by the appellant. As to the sporadic nature of the use, it seems to me that it is best described as varying in intensity. The appellant admitted some days there would be no cars parked there, especially at weekends when the funeral home was only in occasional use, but generally there would be at least 1 or 2 vehicles and sometimes up to 10. In the early years there was also a JCB parked there.
16. The County Council used the site in 2007, but space was left for the appellant to continue to use it for parking in the usual way. This is right at the beginning of the 10 year period and round about the time the bungalow was sold off and the use began to intensify, although I have no exact dates for these events. If I have any doubts it is in this first year of the 10 year period, that the use may have been more sporadic than continuous. However, I have nothing specific to cast doubt on the appellant's description of the use of the land and therefore no reason to not accept his assertion that the use was on-going at that time.
17. Taking all this together, it seems to me that the appellant has been able to show that on the balance of probabilities the use of the site as a car park has been going on for a period of 10 years or more and is thus immune from enforcement action. The appeal on ground (d) succeeds and I do not need to consider the remaining grounds.

Simon Hand

Inspector

APPEARANCES

FOR THE APPELLANT:

Mrs Leanne-Buckley of Counsel
She called
Mr John A Cumisky

FOR THE LOCAL PLANNING AUTHORITY:

Mr Freddie Humphries of Counsel
He called
Lucy MacDonald

DOCUMENTS

- 1 2011 DAS
- 2 2011 Officer's report
- 3 Aerial photographs from 2006, 2007 and 2011
- 4 Appeal documents for APP/C3430/W/17/3192324
- 5 Appellant's closings