



Appeal Decisions

Inquiry Held on 9 July 2019

Site visit made on 9 July 2019

by A A Phillips BA(Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 August 2019

Appeal A: APP/C3430/C/18/3199286

South Cannock Farm, Jacobs Hall Lane, Great Wyrley, South Staffordshire

- 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 Brian Jewkes against an enforcement notice issued by South Staffordshire Council.
- The enforcement notice was issued on 8 March 2018.
- The breach of planning control as alleged in the notice is the material change of use of the land for the open storage of building materials, caravan, vehicles, portable building, portable toilet and any other associated structures and materials.
- The requirements of the notice are:
 1. Cease the use of the land for open storage of building materials, caravan, vehicles, portable building, portable toilet and any other associated structures and materials.
 2. Remove from the land all materials arising from compliance with step 1 above.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2) (d) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld.

Appeal B: APP/C3430/C/18/3199290

South Cannock Farm, Jacobs Hall Lane, Great Wyrley, South Staffordshire

- 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 Brian Jewkes against an enforcement notice issued by South Staffordshire Council.
- The enforcement notice was issued on 8 March 2018.
- The breach of planning control as alleged in the notice is the unauthorised development of land by the erection and siting of structures comprising of lorry bodies and associated structures.
- The requirements of the notice are:
 1. Remove from the land all lorry bodies and their contents and associated structures from the area hatched blue on the attached plan.
 2. Remove from the land all materials arising from compliance with step 1 above.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2) (d) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld.

Preliminary Matter

1. Prior to the Inquiry the Council submitted a Statement of Common Ground which had been signed by a Council representative. However, after a brief discussion at the Inquiry it was agreed that the document was not a final version and did not fully represent matters of common ground between the appellant and the Council. As such the Inquiry proceeded without an agreed Statement of Common Ground.

Application for costs

2. At the Inquiry an application for costs was made by South Staffordshire Council against Mr Brian Jewkes. This application is the subject of a separate Decision.

The appeals on Ground (d)

3. The ground of appeal is that at the time the notices were issued it was too late to take enforcement action. With respect to Appeal A, 10 years continuous use starting from the date of the breach is required, so the material date is 8 March 2008. With respect to Appeal B, the appellant is required to demonstrate that the development of the land by the erection and siting of structures occurred more than 4 years starting from the date of issue of the notice, so the material date is 8 March 2014.
4. When dealing with an appeal on ground (d), the burden of proof is on the appellant and the standard of proof is the balance of probabilities. I am aware that, following the judgement of *Gabbittas*¹ the evidence of an appellant should not be rejected simply because it is not corroborated. If there is no evidence to contradict or make the appellant's version of events less than probable and his evidence alone is sufficiently precise and unambiguous, the appeal should be allowed.

Appeal A

5. The appellant's position is that there has been open storage on the land for over 10 years and as such it is immune from enforcement action. It is clear to me that after 2012 there was an increase in storage taking place at the site, but before then it is argued by the appellant that there was storage taking place on the land, including skips, an old tractor, cars, 'bangers', vans and vehicles owned by the adjacent occupants. I have also noted that the description of the alleged breach on the enforcement notice includes the open storage of vehicles and building materials.
6. It is submitted that based on the principles established by the *Burdle* case² the area edged red on the enforcement notice is the planning unit and I agree that it has not been suggested at any stage that the planning unit has changed since Mr Jewkes first occupied the land.
7. The current use of the land the subject of Enforcement Notice 1 is clearly B8 open storage and it is argued that this use has occurred since Mr Jewkes acquired the site in 2003. However, the evidence provided in the Planning Contravention Notice dated 24 June 2017 is quite clear that the land was in use for farming – pasture land for cattle, grazing for horses and other livestock.

¹ *Gabbittas v SSE & Newham LBC* [1985] JPL 630

² *Burdle v Secretary of State for the Environment* [1972] 1 WLR 1207

8. With respect to the storage of vehicles, the appellant argues that the open storage of cars, vans and tractors has occurred for over 10 years and that continued storage of these items is immune in this case. Furthermore, it is contended that reference in the notice to skips could be deemed to fall within the scope of what is described in the notice as 'building materials'.
9. The evidence provided by Mr Jewkes and two other witnesses provided little in the way of details of the date when storage may have commenced, the regularity of storage use, the precise nature of that storage use and whether it is associated with an agricultural use, a stand-alone storage use or a use ancillary to the business operated by Mr Alan Banks. The evidence provided by witnesses at the Inquiry was very unclear, including unconfirmed dates of activities taking place at the site, no recollection of dates, a lack of clarity regarding the frequency of their visits to the site and the nature of the use of the land. Indeed, two witnesses admitted that they could be of little assistance regarding the dates when storage activities have taken place on the site.
10. I find that the Council's photographic evidence is clear that in 2010 there was no storage use on the land in question, but by 2013 some open storage has taken place. By 2017 the amount of storage within the site has increased substantially. The appellant's own evidence suggests that the storage use the subject of the enforcement notice has occurred since Mr Banks's involvement in the site. However, Mr Banks had no interest in the site until on or around 2009 and 2010.
11. The evidence before me is that the storage uses the subject of Appeal A are associated with Mr Banks' business activities. The evidence presented leads me to conclude that before his involvement the previous use of the land was agriculture-related.
12. The appellant makes the case that the level of storage that took place after 2003 would be open storage which would fall with the definition of a B8 storage and distribution use. However, there is insufficient evidence before me to demonstrate that any storage occurred within the appeal site. Furthermore, had any storage taken place it would not have been anything other than agriculture related. It appears to me that the open storage of cars, van and tractors to which Mr Jewkes refers took place within the red hatched area which is excluded from the enforcement notice. Indeed, photographic evidence from 2010 shows the storage of some items within that red hatched area. Therefore, whether or not the presence of skips falls within the scope of 'building materials' or whether the other items stored were not agriculture-related is largely irrelevant in this case
13. As such, I do not agree with the appellant's case that the Council's enforcement action was a result of an intensification of the level of storage on the site, but rather their action was quite correctly in response to a material change in the use of the land for the open storage of materials and other paraphernalia associated with the current business use of the site.
14. Consequently, rather than relating to any previous agricultural storage or an intensification or increase in the level of storage on the site, the storage use the subject of the enforcement notice has occurred some time since 2010 which is short of the required 10 year period.
15. Accordingly, the appeal on ground (d) must fail.

Appeal B

16. With respect to this appeal on ground (d) the appellant's case is twofold. Firstly, that the unauthorised development the subject of the enforcement notice has been in situ for a period in excess of 4 years and, secondly, there are other structures which are captured within the phrase used in the enforcement notice as 'associated structures' which have also been in situ in excess of 4 years and as such are immune from the action taken by the Council.
17. It is firstly important to establish clearly the alleged breach of planning control which is targeted by the enforcement notice. I acknowledge that in paragraph 2 of the notice the land affected is described as '*land and premises at South Cannock Farm, Jacobs Hall Lane, Great Wyrley, South Staffordshire* **shown edged red on the attached plan**' (my emphasis) and that paragraph 3 does not specify the breach insofar as the blue hatched area on the attached plan is concerned. However, the requirements of the notice as set out in paragraph 5 are very clear regarding the measures that are required to be taken in order to remedy the alleged breach of planning control. Requirement (i) is to remove from the land all lorry bodies and their contents and associated structures from the area hatched blue on the attached plan. This relates to a smaller defined part of the larger red line site, but nonetheless tells the appellant what he is to do to remedy the breach.
18. The structure within the blue hatched line is comprised of lorry bodies and associated structures that are joined together and fixed to the ground by means of a post that is concreted into the ground. As a result of its size, permanence and degree of attachment to the ground it is clear that that is the structure to which the enforcement relates and which is required to be removed. Therefore, I am satisfied that it tells the appellant what is captured by the notice in terms of the breach. As such it is unreasonable for the appellant to interpret the notice as relating to any other structures that are outside the blue hatched area.
19. Therefore, with respect to this appeal on ground (d) the question is whether or not the structure comprised of lorry bodies attached together and fixed to the ground has been in situ on or before 8 March 2014. The Council's evidence shows that the structure was not in situ by July 2013, nor does it affirmatively clarify that it was not on site by March 2014. The building is clearly in place in 2017. In this case the burden of proof is on the appellant. His own evidence suggests that the building within the area hatched blue has been there since "*around 2012ish*". However, that cannot be the case since the aerial photography shows that it was not there in July 2013.
20. Given the appellant's and his witnesses' poor recollection of dates and unreliability in recalling accurately important evidence and information with respect to the site there is insufficient evidence before me to demonstrate that on the balance of probabilities the lorry bodies and their associated structures were in situ on or before 8 March 2018. For that reason the appeal on ground (d) must fail.
21. The appellant's evidence suggests that there is a total of six structures on the site the subject of the enforcement notice and that each of these comprise development within the meaning of s55 of the Act. The definition includes the carrying out of a building and under s336(1) of the Act a building has a wide

definition, including any structure or erection. Case law³ identifies three key factors as being relevant to the question of whether or not something is actually a building. This was confirmed by another case⁴. These factors are size, permanence and physical attachment. I have also had regard to the wording of the Cardiff Rating Authority case⁵ which is clear that it is not possible to construct an exhaustive test of what is or is in the nature of a building or structure. Whether or not a structure can be considered to be a building is very much a matter of fact and degree of each individual case.

22. The structures to which the appellant refers includes the structure which is known as 'the cabin'. The Council makes the case that the enforcement notice does not relate to the structure known as 'the cabin' nor to all of the other structures described in the appellant's evidence but rather that it only relates to the development within the area hatched blue on the plan attached to the notice. As previously set out above it is clear to me from reading the enforcement notice on its face that the matter attacked is the structure within the area hatched blue on the attached plan. The other structures to which the appellant refers within the area edged red are therefore not the subject of this notice.
23. With specific reference to the cabin, the Council's evidence states that this is covered by the first enforcement notice which relates to the storage use of the site, which specifically refers to a 'portable building'. An enforcement notice should be read on the basis of what it says on its face and in this case it is clear to me that the Council has specifically referred to the portable building in the first notice and the 'cabin' which takes the form of a modified portacabin is the only building on site which can reasonably be interpreted as being the portable building to which the first notice relates. The appellant contends that the cabin has been in situ for a period in excess of 4 years. That may be the case; however, as a portable building covered by the first enforcement notice the required period is 10 years which has not been demonstrated, irrespective of the Council's evidence and that of its witnesses.
24. Therefore, the requirement of the first notice is to cease the use of the land for the storage of structures including the portable building. Although requirement 2 requires the removal of materials arising from compliance with the first requirement, the appellant contends that the portacabin cannot be deemed to constitute 'materials'. However, it is clear to me that 'materials' in this case covers matter from which a thing or item is made. Therefore, along with the cessation of the use of the land for open storage purposes all materials i.e. the fabric of the structures stored on the site, must be removed from the land.
25. With reference to the other structures, 2 is a lorry trailer which has been left on the site and is used for general storage purposes, 3 is a former 14 cell prison trailer which has been stored on the site, 4 comprises of two former lorry trailers which are used for sheltering horses and 5 appears to be a series of odd horse boxes and trailers used for general storage and stabling purposes. Although some are fairly substantial in size, I saw no evidence of permanence or physical attachment. I accept that the three stage test outlined in the Barvis case do not all need to be demonstrated nor is there a requirement for

³ Barvis Ltd v Secretary of State for the Environment [1971] 22 P.& C.R. 710

⁴ Skerritts of Nottingham Ltd v Secretary of State for the Environment, Transport and the Regions (No.2) 2 P.L.R. 102

⁵ Cardiff Rating Authority v. Guest Keen Baldwin Iron and Steel Co. Ltd [1949] 1 K.B. 385

the requirements to be met to a particular standard but rather it is a matter of fact and degree. Therefore, based on the evidence before me I conclude that as a matter of fact and degree these other structures do not constitute buildings. Consequently, they are items which are stored on the land.

The Appeals on Ground (g)

26. The ground of appeal is that the time given to comply with the requirements is too short. It was clarified at the Inquiry that the appellant's case with respect to ground (g) comprised his assertion that he required six months to comply from the date of this decision. The Council clarified that they do not take dispute with this time period and as such it is clear to me that there is no longer a dispute between the main parties.
27. Within his appeal forms the appellant requested a period of 12 months to fully comply with the notices. However, the appellant's evidence is that some steps have been taken to comply with the requirements of the enforcement notices in the period between the submitting his appeals and the date of the Inquiry. As such the six month compliance periods are now considered by the appellant to be viable.
28. In this respect it is not necessary for me to consider whether the appeals on ground (g) should succeed.

Formal Decisions

Appeal A

29. The appeal is dismissed and the enforcement notice is upheld.

Appeal B

30. The appeal is dismissed and the enforcement notice is upheld.

Alastair Phillips

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Leanne Buckley-Thomson of Counsel, instructed by Talbots Law Ltd

She called
Brian Jewkes Appellant
Alan Pritchard
Frank Williams

FOR THE LOCAL PLANNING AUTHORITY:

Freddie Humphreys of Counsel, instructed by South Staffordshire
Council

He called
Catherine Gutteridge South Staffordshire Council
Patricia Elizabeth Gee

DOCUMENTS SUBMITTED AT THE INQUIRY

Closing Submission on Behalf of The Appellant Mr Brian Jewkes
Legal Note to Accompany Closing Submissions on Behalf of the Council