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## Appeal Decision

Site visit made on 27 July 2020

**by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI**

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

**Decision date: 17 August 2020**

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**Appeal Ref: APP/A0665/C/20/3251405**

**Land to the rear of 201 to 221 Middlewich Road, Rudheath, Northwich**

- 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 Vincent Clayton (WM Processing Ltd) against an enforcement notice issued by Cheshire West & Chester Council.
  - The enforcement notice was issued on 23 March 2020.
  - The breach of planning control as alleged in the notice is the material change of use of land to a storage depot and contractors yard including the loading and unloading of hardcore and soils, siting of containers, skips, trailers, road signs, protective barriers, gas bottles, vehicles, soils and associated materials.
  - The requirements of the notice are 1. Cease the use of the land as a storage depot and contractors yard; 2. Cease the use of the land for the deposit of hardcore and soils and the associated loading and unloading of those materials; and 3. Remove all containers, skips, trailers, road signs, protective barriers, gas bottles, vehicles, hardcore, soils and all other associated materials and equipment from the land.
  - The period for compliance with the requirements is 2 calendar months.
  - The appeal is proceeding on the grounds set out in section 174(2)(d) of the Town and Country Planning Act 1990 as amended. The prescribed fees have not been paid within the specified period so the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended cannot be considered.
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### Decision

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

### Reasons

2. The appeal land is about 0.33 hectares and is behind and to the north of development fronting Middlewich Road. There is vehicular access to the land from the west and east. The onus of proof in a ground (d) appeal is on the Appellant and his evidence must be sufficiently precise and unambiguous to justify a conclusion, on the balance of probability, that the change of use alleged in the notice has subsisted, uninterrupted, for a period of more than ten years.
3. In a Statutory Declaration by Mr N J Gidney, Mr C A Platt and Mr R M Wright it is stated that "We purchased the...land...in 2004 as Hankinsons Cheshire Limited...", "We transferred the land from the Company to our personal names in April 2017" and "We were the registered proprietors of the land from 2004 to 28 February 2019". It is also stated that "We used the land or permitted our tenants to use the land throughout our ownership up to 18 September 2014 as a builder's storage unit/depot at this point occupation of the land ceased". The land was leased to Strike Fencing Contractors from about April 2011 to September 2014.

4. Evidence of residents of dwellings between the land and Middlewich Road indicates that the current business operations on the land, for the uses alleged in the notice, commenced about March 2019. An aerial photograph 'taken circa 2019' was clearly taken before these operations commenced because the land is almost devoid of anything that could be described as constituting a storage depot and contractors yard. On their own evidence the previous owners of the land admit that a builder's storage unit/depot use of the land ceased in September 2014; this use must have been associated with Strike Fencing Contractors lease of the land. It is likely, given the aerial photograph, that there was, if any at all, only limited use of the land between September 2014 and its sale on 28 February 2019.

5. The likely limited use of the land between September 2014 and March 2019 is corroborated in a supporting letter by Mr A Pryce, who lives near the land and who has stated that, with regard to the current use, "Previously the land was an eyesore, a lot of illegal dumping of waste, i.e. building materials, household waste, washing machines etc.". In another supporting letter, by Mr D Bernardo and with reference to the land, it is stated that "We have had to stop a fair few people to shall we say unlawfully camp on here". If the land was considered by 'a fair few people' to be available for camping it would probably not have been in use as a storage depot and contractors yard. The use of the land alleged in the notice is specific to the current use and there is nothing in evidence to indicate that such a use has subsisted uninterrupted for a period of more than ten years.

6. The Appellant's evidence is imprecise and ambiguous and does not, even on the balance of probability, justify a conclusion that the land has been in continuous use as a storage depot and contractors yard for more than ten years, and is therefore immune from enforcement action. The ground (d) appeal thus fails.

*John Braithwaite*

Inspector