



Appeal Decision

Site visit made on 12 January 2021

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 April 2021

Appeal Ref: APP/G0908/C/20/3258893

Land to the rear of 51 High Street, Workington, CA14 4ET and land to the rear of The Old Blacksmiths Shop, High Street, Workington, CA14 4ET

- 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 Frank Younghusband of F Younghusband and Sons Ltd against an enforcement notice issued by Allerdale Borough Council.
 - The enforcement notice, numbered ENF/2020/0004, was issued on 28 July 2020.
 - The breach of planning control as alleged in the notice is, without planning permission, change of use from residential garden to commercial storage and use as a builders yard.
 - The requirements of the notice are to cease the unauthorised commercial storage and use as a builders yard and return the land to domestic use.
 - The period for compliance with the requirements is two (2) 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.
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Summary Decision: The appeal is dismissed and the enforcement notice is upheld with a correction in the terms set out below in the Formal Decision

Procedural Matters

1. The notice alleges the 'change of use' of the land which, in itself, is not development requiring planning permission for the purposes of section 55(1) of the 1990 Act. I shall therefore correct the notice to refer to a material change of use of the land as defined in section 55(1) of that Act. The notice is headed as a 'Material Change of Use' and I am satisfied that the notice can be corrected in this respect without causing injustice.
2. The appeal is proceeding on the grounds (d) and (g) only. In relation to the appeal on ground (d), my decision must be based on the facts of the case and relevant judicial authority. For the avoidance of doubt, this means that the planning merits of the development are not relevant to this appeal. In that context, the objections raised by the occupiers of surrounding residential properties to the development do not fall to be considered. Similarly, I have had no regard to the Noise Assessment Report submitted by the appellant as part of his Final Comments.

Background

3. The background to this appeal is that the building which I understand to be known as The Old Blacksmiths Shop has been used by a roofing business since around 1955. I understand that the adjoining property, known as 51 High Street, was in use as a residential dwelling until 2019.

4. The land subject to the enforcement notice sits to the rear of these two properties. There is no dispute that until circa 2009 this land was used by the occupier of 51 High Street, a Mr Borthwick, as his residential garden and maintained by him until his health deteriorated. Thereafter, it is the appellant's case that the roofing business used this land for additional storage. I am advised that Mr Borthwick passed away in July 2019 and that the appellant was able to purchase both the dwelling known as 51 High Street and the land the subject of this appeal.
5. In July 2020, planning permission was granted for the change of use of the existing dwelling at 51 High Street to office use (Use Class B1) in association with the roofing business operated by the appellant from The Old Blacksmiths Shop (Council Ref: FUL/2020/0087). Then, in February 2020, the land subject to the enforcement notice was lowered by approximately 800mm. At around the same time, a wall separating the land subject to the enforcement notice and the front of the property removed to allow improve access between the two areas.

The appeal on ground (d)

6. The appeal on this ground is that, at the date on which the notice was issued, no enforcement action could be taken in respect of any breach of planning control that may be constituted by those matters. In order to succeed on this ground, the appellant must show that the use had been continuous for a period of ten years beginning with the date of the breach. The test in this regard is the balance of probability and the burden of proof is on the appellant.
7. It is convenient to break down the evidence before me into three sets: the evidence provided by the appellant; the evidence provided by the Council: and the evidence provided by local residents. I will consider each set in turn before concluding against the evidence as a whole.

The evidence provided by the appellant

8. The appellant's evidence on this ground of appeal is largely comprised of a number of statutory declarations. I am satisfied that all of these statutory declarations are properly made in the presence of a solicitor and accordingly have afforded them due weight.
9. The statutory declaration provided by the appellant, Mr Frank Younghusband, explains that he began using the land subject to the enforcement notice for the storage of scaffold, slates, tiles and timber associated with the roofing business in late 2009. His statutory declaration is supported by a rent book dating to 1968 which, whilst evidence that the roofing business occupied land owned by Mr Borthwick, by the appellant's own admission does not relate to the land now subject to the enforcement notice. Consequently, this evidence does not assist the appellant beyond confirming the background to the use of the land.
10. The appellant's statutory declaration is also supported by a series of photographs taken in January 2020. These photographs do clearly show the storage of materials which, I accept, could be associated with the appellant's roofing business. However, two points arise from these photographs. Firstly, they were taken towards the very end of the period of ten-year period over which the appellant must show continuous use of the land, and in that respect are of only limited value. Secondly, these photographs were taken shortly

before the land was lowered in or around February 2020, and it is evident that the materials shown are lying on a grass surface typically associated with a residential garden.

11. The statutory declaration provided by Mr Ronald Weaver confirms that he has been living at a property in High Street, Workington, for some 35 years. Mr Weaver confirms that the land subject to the enforcement notice can be clearly seen from his property. It is Mr Weaver's evidence that this land has been used for storage, including pallets, slates, tiles, roof sheets, scaffold and chimney pots, since late 2009.
12. The occupier of another property in High Street, Workington, Mr Stephen Wilson, confirms in his statutory declaration that he has been living in that property since May 1997 and has known that property since April 1977. It is Mr Wilson's evidence that the land subject to the enforcement notice has been used by the appellant's business to store materials, such as slates, scaffolding, timber, ladders, guttering and downspouts, since the end of 2009.
13. In his statutory declaration, Mr Wilson also recounts an occasion in August 2010 when he had reason to enter the land subject to the enforcement notice (then owned by Mr Borthwick) in order to install damp proofing treatment into the gable end wall of his own property. The entail removing, and eventually replacing, a shed said to belong to the appellant¹. Both the original shed and its replacement were sited, albeit in slightly different positions, within the land now subject to the enforcement notice.
14. The above is supported by a dated photograph which proves, beyond doubt, that the events described by Mr Wilson did take place on or around 15 August 2010. However, the photograph only shows part of the gable end wall to Mr Wilson's property and the trench that he dug to install the damp proofing treatment, together with part of what appears to be the replacement shed. The photograph does not show any part of the wider site or the storage of materials associated with the appellant's roofing business. For that reason, this evidence does not greatly assist the appellant.
15. Moreover, although described by Mr Wilson as belonging to the appellant, his statutory declaration is not accompanied by any documentary evidence to show that this shed was used in connection with the appellant's roofing business. Neither does Mr Wilson offer an explanation as to why a shed belonging to the appellant was sited on land owned by Mr Borthwick. Furthermore, I note that the appellant's own statutory declaration makes no mention of this shed, either in terms of owning it or using it in connection with his roofing business. Neither does the appellant make any reference in his statutory declaration to the events described by Mr Wilson. For that reason, I attach only very limited weight to the presence of this shed as pointing towards use of the land now subject to the enforcement notice for storage in association with the appellant's roofing business.
16. In a statutory declaration dated 2 September 2020, Mr David Powell, occupier of a dwelling in High Street, Workington, confirms that to his knowledge the appellant's roofing business have stored surplus timber and other materials on the land since 2009. The certainty with which Mr Powell states his position stems from the fact that, some 10 or so years ago, he purchased a wood

¹ The appellant confirms in his Final Comments that he does own that shed.

burning stove and needed to source timber for it. He was aware that the roofing materials used by the appellant's business typically arrived on pallets and explains that both Mr Borthwick, who owned the land at that time, and the appellant gave him permission to go onto the land and chop up pallets for fuel for his wood burner. Mr Powell goes on to explain that, on average, he would do so two or three times a week.

17. In addition to these statutory declarations, a letter from Mr Sean Wilkinson, Director of V.Wilkinson & Son Ltd, relates how his company carried out work on Mr Borthwick's own property over a period of some 35 years. In his letter, Mr Wilkinson explains that, in order to gain access to Mr Borthwick's dwelling to carry out that work, it was often necessary to request that slates and other materials stored on the land were removed.
18. Mr Wilkinson then goes on to explain that his company has an ongoing business arrangement with the appellant's roofing business whereby they hire the company's roof ladders when they are required to work at height. That agreement has been active for the past 10 years or so and, on every occasion, they have been required to return the hired equipment to what Mr Wilkinson describes as "Mr Younghusband's rented patch of grassy land at the rear of 51 High Street".
19. The letter provided by Mr Wilkinson is not a sworn statement and therefore does not attract the same weight as the statutory declarations rehearsed above. Nevertheless, the letter tends to corroborate much of what is said in those statutory declarations and as such deserves to be afforded significant weight in its own right.
20. Finally, the appellant has provided a letter from Mr T. Edgar, a relative of Mr Borthwick and the Executor of his will. This letter, submitted as part of the appellant's Final Comments to refute the evidence of local residents, indicates that the appellant's company used the yard next to Mr Borthwick's house for the previous 55 years. The letter then goes on to indicate that more recently, and probably within the past ten years, the company also utilised the grassed area too. This letter is short of detail and does not substantively add to the evidence provided in the Statutory Declarations referred to above.
21. The appellant has also provided a number of photographs of the site, together with drawings of the fence that has been erected. These show, amongst other things, the wall that was removed to provide access to the rear of the site. That same photograph (Appendix 4 of the appellant's submission) does show the storage of various materials but is undated, and therefore of little assistance.
22. Of more assistance are the aerial photographs provided by the appellant. However, in my judgment, these do not support his case. One of the aerial photographs is dated 20 April 2020, and therefore depicts the area as excavated in February 2020. Whilst this photograph does show all of the land in use in association with the appellant's roofing business, it was taken towards the very end of the period of ten-year period over which the appellant must show continuous use of the land and is therefore of only limited value.
23. The aerial photograph dated 30 June 2018 shows the site clearly. It is evident from this photograph that materials of some description are being stored on part of the land now subject to the enforcement notice. It is not possible to

discern exactly what those materials are and I cannot discount the possibility that these may be the pallets used by Mr Powell as fuel for his wood burner. Whatever they are, they stand out quite clearly as light patches against a slightly darker surface. It is also noticeable that the ground is a distinctly lighter colour than the surrounding residential gardens.

24. The instructive feature shown on this aerial photograph is the bright green line that runs off-centre in a broadly north-south direction. This appears to be a hedge of some description and also appears in a photograph taken at ground level submitted with the appellant's Final Comments. All of the storage referred to above, whatever it may be, takes place to the east of that hedge. To the west of that hedge, the land has the appearance of garden land and there is no storage taking place on it. The ground surface itself is also a darker colour than the ground on the east side of the hedge.
25. The photograph submitted with the appellant's Final Comments does show what appears to be timber pallets stored behind the hedge (i.e. on the area to the west of the hedge). However, the photograph only shows a small part of that land and no roofing materials are visible being stored on that part which is visible. Furthermore, the photograph is not dated.
26. The earliest of the aerial photographs was taken on 15 September 2016 and therefore a little over half-way through the period of ten-year period over which the appellant must show continuous use of the land. The resolution is too poor to discern any details but the predominant impression is that the colour of the ground appears indistinguishable from that of the surrounding residential gardens. I note also that lighter features and patches do show up within surrounding land but that none are visible on the appeal site. This contrasts with the image taken some two years later, in June 2018, where the storage does show up as lighter patches. Moreover, the obvious difference in ground colour between the land on the west side of the hedge and that on the east side that is visible in the photograph taken in June 2018 is not apparent in this photograph. Although not in any way definitive, this is not consistent with the storage of materials on the area subject to the enforcement notice, at least to a significant extent.

The evidence provided by the Council

27. Aside from commenting on the evidence provided by the appellant, the Council relies upon references made about the use of the appeal site in letters of objection submitted in relation to planning application FUL/2020/0087. The letters have been redacted and I am therefore not always able to ascertain the exact juxtaposition of the properties occupied by the authors of those letters with the appeal site. However, the opinions expressed in those letters are none the less valid for that².
28. The first of these letters (which I shall refer to as Objection 1) indicates that the author moved to their property some 6½ years ago. It is confirmed that the land now subject to the enforcement notice was always a garden kept by an elderly gentleman who lived in the house next to the building used by the appellant's roofing business and which the author believes has been made into

² In the interest of clarity, I am referring here to the opinions expressed in relation to the historical use of the land and not to the planning merits of the use taking place.

- an office³. The author goes on to explain that there was never vehicular access to the garden as there was a wall across to the house and that the only access to the garden was via a 3 feet wide old wooden gate. The author believes that the wall was removed to create a vehicular access.
29. The second letter (Objection 2) is from the former occupier of a property in Stanbeck Meadows. The author confirms that he owned the property from new (but does not say when that was) until 2014. The author goes on to confirm that the land subject to the enforcement notice belonged to the gentleman who owned the house and the property from which the appellant's roofing business operates from⁴. The author believes that the land subject to the enforcement notice was always a residential garden and that the appellant's roofing business never had access to that land.
30. The third letter (Objection 3) is from the occupier of a residential property that borders the land subject to the enforcement notice. The author of this letter also believes that this land was always a residential garden and was not used by the appellant's roofing business. The author of this letter goes further and opines that the land up to his/her boundary wall has recently been turned into a commercial builders yard. Moreover, the author is able to put a timescale on that, saying 'recently' in this context being January 2020.
31. The fourth letter (Objection 4) is expressed more succinctly, simply indicating that the residential garden has been turned into a building yard.
32. The final letter (Objection 5) is from the occupier of a residential property that overlooks the land subject to the enforcement notice. The author of this letter explains that (s)he has overlooked the property for the last 30 years and confirms that it has always been the private garden of the previous owner.
33. In addition to these letters, the Council has provided a series of photographs of the appeal site. The Council indicates that these photographs were taken at around the time that groundworks commenced on the land subject to the enforcement notice. The Council does not indicate precisely from where these photographs were taken but the location appears to be from one of the residential properties that adjoin the site to the west.
34. These photographs show, amongst other things, an area of garden immediately adjoining the boundary of the residential property. That area of garden is enclosed by a stone wall that runs across the site in a north-south direction. Two of these photographs show timber pallets being stored in the area beyond that wall. In another, it appears that the works to lower the level of the site have commenced.
35. The Council does explain in its appeal statement that it was anticipating the submission of statutory declarations from local residents indicating that the land has not been used as a builders yard for 10 years. Those representations were duly submitted in response to the appeal notification, together with a number of other documents. It is to those submissions that I now turn.

³ This description is entirely consistent with the occupation of that property by Mr Borthwick.

⁴ This is again entirely consistent with the occupation of that property by Mr Borthwick.

The evidence provided by local residents

36. The evidence from the local residents is primarily provided in the form of Witness Statements, each supported by a Statement of Truth. The documents are electronically signed. However, they do not appear to have been signed in the presence of a solicitor, commissioner for oaths or notary public. For that reason, I have not treated these representations as Statutory Declarations and have not afforded the same weight to them as if they had been Statutory Declarations.
37. From the similarities between the comments made, it appears that the authors of these Witness Statements were also the authors of some of the objections made in relation to planning application FUL/2020/0087 referred to above in relation to the Council's evidence. Where this is the case, in order to avoid double-counting of the evidence against the appellant, when possible it is necessary for me to make that link in respect of the particular Witness Statements submitted.
38. The joint Witness Statement of Mr Andrew Smith and Mrs Stacey Smith confirms that they have been residents of a property in Stanbeck Meadows, Workington, for more than six years. On my reading, it appears that Mr & Mrs Smith were also the authors of Objection 1 referred to above in relation to the Council's evidence.
39. The joint Witness Statements provided by Mr & Mrs Smith provides more detail than in Objection 1. It is explained that Mr & Mrs Smith have a clear view of the land subject to the enforcement notice from their property. It is also clear that, in addition to living in the property as her marital home for over six years, Mrs Smith previously lived in the property with her family for the period between 1989 and 2003. As I understand it, Mrs Smith's family continued to reside there until Mr & Mrs Smith purchased the property in or around 2014. It is also indicated that Mr Smith visited the property from the year 2000, and that Mr & Mrs Smith both visited the property between 2003 and moving there in 2014. The duration over which Mr & Mrs Smith have had views over the land subject to the enforcement notice from their property, and/or have been familiar with it, therefore spans the entire duration of the ten-year period over which the appellant must show continuous use of the land, and indeed for longer than that. In my view, that is significant.
40. In their joint Witness Statements, Mr & Mrs Smith reiterate the comment made in Objection 1 that the land now subject to the enforcement notice was always kept as a garden by Mr Borthwick⁵. The Witness Statement goes on to indicate that the garden was also used by Mr Powell to store wood for his personal wood burner, and that Mr Powell had a wooden hut on the garden for this purpose.
41. In their Witness Statement, Mr & Mrs Smith state outright that they never saw the appellant's roofing business store materials on or occupy the garden during the time Mr Borthwick was alive. They explain that the garden did become overgrown and was very rarely used by Mr Borthwick, but do recall seeing gardeners attend the garden from time-to-time. It is, however, Mr & Mrs Smith's evidence that they have never seen any of the workforce from appellant's roofing business on this garden area.

⁵ Now specifically named.

42. It is Mr & Mrs Smith's evidence that only at the point of the appellant's roofing business purchasing the land from the Estate of Mr Borthwick did the business begin to take action in developing the site. It was only as recently as January 2020, say Mr & Mrs Smith, that the appellant's roofing business sought to widen the access from the front of their property to enable their commercial vehicles to enter onto the land subject to the enforcement notice. It is also Mr & Mrs Smith's evidence that, around the same time, a wall separating the building and land occupied by the appellant's roofing business from the garden that had hitherto been occupied by Mr Borthwick was demolished. According to Mr & Mrs Smith, it was in around February 2020 that the appellant's roofing business began storing building materials on the garden.
43. In his Witness Statement, Mr Ian Payne explains that he lived in a property that bordered the land subject to the enforcement notice from 1989 until 2014. It is evident from the details in Mr Payne's Witness Statement that this is the same property subsequently purchased by Mr & Mrs Smith, and that he has continued to visit the property on a frequent basis. It is also clear from the similarities of the comments made that Mr Payne was also the author of Objection 2 referred to above in relation to the Council's evidence.
44. It is Mr Payne's evidence that the appellant's roofing business have never, up until January 2020, occupied, stored, or even been seen on the land subject to the enforcement notice⁶. It is Mr Payne's evidence that the land was transformed from a residential garden to a commercial/industrial building/roofing yard in January 2020. Prior to this date, says Mr Payne, this area was a residential garden. According to Mr Payne's Witness Statement, the only other people seen in this area of land apart from the owner up until January 2020 were gardeners and a retired gentleman who lives on High Street who stores wood for his wood burner and helped in the garden⁷.
45. The third Witness Statement is from a gentleman, Mr William Walker, who has lived in his house on Stanbeck Meadows since it was built in 1989. In his Witness Statement, Mr Walker explains that part of his property boundary is with the land subject to the enforcement notice, and that he can see across that land from his property.
46. It is also Mr Walker's evidence that never, up until January 2020, has the appellant's roofing business occupied, stored goods, worked or operated on the land subject to the enforcement notice, or have even been seen on this area⁸. It is Mr Walker's further evidence that the land subject to the enforcement notice was transformed from a residential garden to a commercial/industrial building/roofing yard in January 2020, and that prior to this date this area was a residential garden. It is then Mr Walker's evidence that the only other people seen in this area of land apart from the owner up until January 2020 were gardeners and a retired gentleman who lives on High Street who stores wood for wood burner and helped in the garden⁹.
47. The fourth Witness Statement is from another gentleman, Mr Kenneth Yates, who has also lived in his house on Stanbeck Meadows since it was built in 1989. In his Witness Statement, Mr Yates explains that that he can see across

⁶ I have taken this to mean never seen by Mr Payne.

⁷ This is consistent with the use of the land by Mr Powell

⁸ Again, I have taken this to mean never seen by Mr Walker.

⁹ This is again consistent with the use of the land by Mr Powell.

that land subject to the enforcement notice from his property. It is doing no disservice to Mr Yates to briefly record here that the evidence in his Witness Statement is essentially the same as that given by Mr Payne and by Mr Walker.

48. From the information available to me, I have not been able to positively link the authors of these last two Witness Statement to any of the objections referred to above in relation to the Council's evidence. That said, given the similarity in content, it is in my view likely that they are also the authors of objections made in relation to planning application FUL/2020/0087. I have noted the similarity in the wording and content of the Witness Statements provided by Mr Payne, Mr Walker and Mr Yates. However, in my opinion, that does not detract from the veracity of the evidence given in those Witness Statements.
49. The appellant points to a number of factual inaccuracies in the evidence submitted by local residents. Whilst I am prepared to accept the appellant's evidence in these respects, it seems to me that the factual errors made by local residents are primarily in relation to matters of which they could not be expected to have direct knowledge. Those errors do not, in my view, undermine the remainder of the evidence of local residents in relation to matters which they could directly observe from their own properties.
50. In that respect, the appellant also points out that some of the views of the appeal site from some of their properties are obscured by intervening vegetation or are otherwise restricted, a fact that I was able to observe at my site visit. I did not, however, have the opportunity to view the appeal site from those properties and to see for myself the extent to which, if any, the view of the appeal site is obscured and/or restricted. It was also evident from my site visit that the view from some of those houses is/was uninterrupted and not restricted by intervening vegetation and/or structures (prior to the recent erection of the boundary fence). I therefore have no reason to doubt local residents where they claim to have views over the appeal site.
51. The Witness Statement provided by local residents were accompanied by photographs and screenshots showing the appeal site, together with other documents. I have had regard to all these documents, including the aerial photographs provided. Whilst the latter appear to be some of the same images as provided by the appellant, they do have the benefit of offering somewhat sharper resolution. This has only served to reinforce the conclusions that I make above in relation to those photographs.

Conclusion on the appeal on ground (d)

52. Looked at in the round, the evidence provided in support of the appellant lacks detail and precision. In particular, the statutory declaration provided by the appellant himself, Mr Frank Younghusband, is short on detail. I would have expected that Mr Younghusband, as someone intrinsically involved with the roofing business operating from the site throughout the relevant ten-year period, would be ideally placed to provide a considerable amount of detail in relation to the use of this land. That he does not is, in my view, itself instructive.
53. By contrast, the evidence provided by Mr Wilkinson is clear and precise insofar as, in part, it specifically identifies "Mr Younghusband's rented patch of grassy land at the rear of 51 High Street". To my mind, that is a clear reference to

the land subject to the enforcement notice. Although not contained in a sworn statement, that nevertheless constitutes strong evidence that at least some storage did take place on this land.

54. Similarly, the evidence provided by Mr Powell is also clear and precise, not least because it relates to a specific and memorable event (i.e. the purchase of his wood burning stove). His evidence is reinforced by that of local residents who confirm that he was using the land for this purpose. However, the use that Mr Powell was making of the land (the storage of timber pallets for the purpose of chopping them up for fuel for his wood burner) does not qualify as commercial storage or use of the land as a builders yard. The evidence of Mr Powell, however precise and accurate, therefore does not assist the appellant in demonstrating that the breach of planning control alleged in the notice has been carried on continuously for a period of ten years.
55. The evidence provided by Mr Weaver and by Mr Wilson lacks detail and precision in terms of the uses alleged in the notice. For that reason, this evidence does not greatly assist the appellant.
56. The relevance of the evidence provided by the Council is primarily in relation to that contained in the letters of objection submitted in relation to planning application FUL/2020/0087. It is in those letters that the first iteration of an alternative version of events to that suggested by the appellant comes to light. That alternative version of events is set out in more detail in the Witness Statements provided by local residents. In my view, it is those Witness Statements that provide the more compelling version of events.
57. In that context, I place much reliance on the fact that the occupiers of the surrounding residential properties have or have had the benefit of a view over the land subject to the enforcement notice. In particular, Mr & Mrs Smith, whose property directly adjoins the land subject to the enforcement notice, have had the benefit of an unrestricted view of the land for just over half of the relevant ten-year period. Furthermore, before them, Mr Payne enjoyed that same view for a considerable number of years. Similarly, both Mr Walker and Mr Yates have a view (albeit to some extent restricted) over the land subject to the enforcement notice throughout the relevant ten-year period.
58. Between them, I therefore have before me first-hand evidence of the use of the land subject to the enforcement notice from witnesses who were there on a permanent or near-permanent basis, or were regular visitors, throughout the relevant ten-year period. In my opinion, with the possible exception of the appellant himself, no one was better placed than these individuals to note and record what was actually taking place on this land during that time.
59. The evidence of Mr & Mrs Smith is clear: that the land now subject to the enforcement notice was always kept as a garden by Mr Borthwick and that it was not until around February 2020 that the appellant's roofing business began storing building materials on the land. This is corroborated by the evidence of Mr Payne, Mr Walker and Mr Yates. All three maintain in their respective Witness Statements that never, up until January 2020, did the appellant's roofing business occupy, store goods, work or operate on the land subject to the enforcement notice.
60. I am struck by the consistency of this evidence from witnesses well-placed to know what was taking place on the land subject to the enforcement notice.

Notwithstanding that it was not provided in Statutory Declarations or sworn statements, I attach substantial weight to that evidence.

61. The evidence of the local residents is to some extent supported by the aerial photographs. The relatively poor resolution of these photographs precludes any firm conclusion from being reached. However, in the most generous interpretation of these photographs, it might be accepted that the presence of some lighter patches against a darker background indicates that part of the site appears to be being used for storage of some description. In my view, it is more likely than not that these lighter patches are the pallets used by Mr Powell as fuel for his wood burner as opposed to the storage of roofing materials, etc,
62. But that is as helpful as the aerial photographs get in terms of supporting the appellant's case. Even if it was accepted that some storage is taking place on part of the site, the aerial photographs show a distinct absence of storage on the other parts of the land. Moreover, the aerial photographs cover only the latter part of the relevant ten-year period. There are no photographs to indicate or suggest that the use alleged in the notice was taking part in the first half of that ten-year period. In neither respect do the aerial photographs assist the appellant in demonstrating that the use alleged in the notice has taken place continuously and without significant interruption across the whole of the land for the whole of the relevant ten-year period. For that reason, whilst I place no reliance upon them, I consider that on the balance of probability the aerial photographs tend to favour the version of events advanced by local residents rather than that of the appellant.
63. In summary, I am persuaded by the evidence of Mr Wilkinson in particular that some ad hoc storage of roofing materials, etc has taken place on part of the land on some occasions. However, the consistent and compelling evidence provided by local residents leads me to conclude, on the balance of probability, that even if some storage did place on the land, it did not do so continuously throughout the relevant ten-year period. Moreover, even if some storage did take place, I am far from convinced that it occurred across the whole of the land subject to the enforcement notice (i.e to the west of the hedge that appears in aerial photographs).
64. In that respect, I am minded to accept as being the more likely the version of events described by local residents. I therefore consider it more likely than not that commercial storage and use as a builders yard across the whole of the land subject to the enforcement notice did not occur until the level of the site was lowered and vehicular access created in or around January/ February 2020. In that respect, I find on the balance of probability that the breach of planning control alleged commenced only some four or five months prior to the notice being issued.
65. This is not a situation where the local planning authority has no evidence of its own to contradict that of the appellant or make his version of events less than probable. On the contrary, I find that the appellant's evidence is not sufficiently precise to counter the evidence produced by the Council and by local residents, such that the appellant has not discharged the burden that falls upon him. I conclude that, on the balance of probability, the use of the land subject to the enforcement notice for commercial storage and as a builders yard has not been continuous for a period of ten years beginning with the date

of the breach. It follows that the Council was in a position to take enforcement action in respect of the breach of planning control constituted by the matters stated in the notice.

66. Accordingly, the appeal on ground (d) fails.

The appeal on ground (g)

67. The ground of appeal is that the period for compliance specified in the notice falls short of what should reasonably be allowed. The period for compliance specified in the notice is two months.
68. The appellant's case on this ground of appeal is that there are many items stored on the site and that it would take time for the business to find alternative storage, either via purchasing a new storage site or enter a rental agreement in order to continue to successfully run this long standing business. The appellant considers that a compliance period of 6 months would be more realistic.
69. My task in relation to this ground of appeal is to balance the public interest in securing expeditious compliance with the enforcement notice against the private interest bound up in the development subject to the notice. In so doing, and notwithstanding the Noise Assessment Report submitted by the appellant, I must assume that the use of the land subject to the enforcement notice for commercial storage and as a builders yard does cause the harm alleged in the reasons for issuing the notice.
70. The appellant explains in his Statement of Appeal that the roofing materials required for any project are delivered direct to the project address and that the land subject to the enforcement notice is used for the storage of any surplus roofing materials. That is consistent with the photographs submitted with the appellant's Statement of Appeal, which show the majority of the site as being open yard with some materials stored around the periphery.
71. That was also the situation at the time of my site visit. I noted that relatively modest stacks of tiles and slates were lined along the southern boundary of the site, and that a variety of chimney pots were lined along west boundary. Other materials, including pallets, was stored in and around some timber structures sited along the northern boundary. The centre part of the site was open. In my view, that level of storage is not consistent with the description of "many items" in the appellant's Statement of Appeal.
72. Although the appellant implies that finding alternative premises would take time, I have been provided with no evidence to support that claim. The Council advise that there are industrial units to let with immediate availability within Workington. Whilst the Council has provided no evidence to support that assertion and/or to show whether those units would be suitable for the appellant's business, neither has the appellant provided any evidence to show that a structured site search has failed to reveal the availability of any suitable alternative premises. In the absence of that evidence, I am unable to conclude that no such suitable premises are immediately available.
73. Having regard to the above, I am not convinced that a period of 6 months would be required to remove the materials stored on the site and to find alternative premises. Neither has the appellant suggested that the other

requirements of the notice could not be complied with within the period specified in the notice.

74. In weighing the balance between public and private interests, for the reasons set out above I conclude that the public interest in expeditious compliance with the requirements of the enforcement notice outweighs the private interest in extending that period of compliance. I am, therefore, not persuaded that there is any need to extend the period for compliance with the notice and am satisfied the period of compliance of two months stated in the notice is a proportionate response to the breach of planning control that has occurred.
75. Accordingly, the appeal on ground (g) fails.

Conclusion

76. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction.

Formal Decision

77. It is directed that the enforcement notice is corrected by:
- in paragraph 3, insert the words “the material” after the words “Without planning permission”
78. Subject to that correction, the appeal is dismissed and the enforcement notice is upheld.

Paul Freer

INSPECTOR