



Appeal Decision

by Elaine Gray MA(Hons) MSc IHBC

an Inspector appointed by the Secretary of State

Decision date: 17 May 2021

Appeal Ref: APP/Q9495/C/20/3264838

Land west of Stripe Lane, Kendal Road, Lindale, Grange over Sands, Cumbria

- 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 W A Briggs against an enforcement notice issued by the Lake District National Park Authority.
 - The enforcement notice is dated 12 November 2020.
 - The breach of planning control as alleged in the notice is: Without planning permission a material change of use of the land to a use for storage including: Caravan; Timber shed; Site cabin; Timber planks; Green metal cabinet; Plastic piping; Traffic cones; Site barriers; Rubble; Paving slabs (as shown in the images attached to the enforcement notice).
 - The requirements of the notice are: 1) Permanently cease to use the land for storage. 2) Permanently remove the following from the land: Caravan; Timber shed; Site cabin; Timber planks; Green metal cabinet; Plastic piping; Traffic cones; Site barriers; Rubble; Paving slabs (as shown in the images attached to the enforcement notice).
 - The period for compliance with the requirements is three 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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Decision

1. It is directed that the enforcement notice be amended by the deletion of the text 'three months' from the period for compliance, and the substitution of it by the text 'four months'.
2. Subject to this amendment, the appeal is dismissed, and the enforcement notice is upheld.

Procedural Matters

3. The determination of this appeal relates only to grounds (d) and (g). Ground (d) is a legal ground relating to the time limits for enforcement action, and ground (g) is a matter of mitigation relating to the compliance period. As I was able to assess these grounds on the written evidence alone, it was not necessary for me to carry out a site inspection.

The appeal on ground (d)

4. The appeal on ground (d) is that, at the time the enforcement notice was issued, it was too late to take enforcement action against the matters stated in

- the notice. The onus of proof lies with the appellant, and the test is on balance of probabilities.
5. The Planning Practice Guidance (PPG) says an applicant is responsible for providing sufficient information to support an application for a Lawful Development Certificate, which is the equivalent of ground (d) in an enforcement appeal. The PPG says: "In the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability".
 6. The time limits for taking enforcement action are set out in s171B of the Act. Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which operations are substantially completed. In respect of a breach of planning control involving the material change of use of land, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.
 7. The enforcement notice alleges a material change of use of the land for the storage of a number of items. Of these items, the appellant's case focuses on the caravan, the timber shed, the site cabin and the green metal cabinet, which contains electrical equipment. The other items, including timber planks, plastic piping, traffic cones, site barriers, rubble and paving slabs, have been cleared from the appeal site. The notice was issued on 12 November 2020, and so in order to succeed, the appellant needs to demonstrate that the storage use began on or before 12 November 2010, and continued for an uninterrupted period for 10 years.
 8. The appellant states that the site was purchased in 2003 and has been used for storage since that time. He says the site cabin was put on site in 2007 and the caravan in 2009/2010.
 9. He submits a number of documents in support of his case, including an invoice from Andrew Briggs Groundworks dated the week ending 10 July 2009 for 'Storage of gas pipe for ongoing work at Lindale.' This document certainly points to some form of storage use in 2009. However, it does not relate to any of the structures that are the subject of the enforcement notice, and it does not demonstrate the length of time the gas pipe remained on site.
 10. A letter of 15 October 2010 from MB Hodgson & Son addressed to Mrs Briggs, the appellant's wife, gives a report and market appraisal for the property. It states that there is currently a portacabin, which the appellant says is the site cabin, a caravan and a skip on the site. The appellant argues that this document confirms that the site cabin and caravan have been present for more than 10 years. However, even if it is accepted that the caravan and cabin were placed on the site at that time, this evidence does not show that they remained there continuously for ten years.
 11. Although the appellant states that the timber shed was placed on site in 2015, he confirms that there is no documentary evidence to show that this was the

- case. I note also the theft in 2011 of equipment from the site, for which the Police reference number is SL1103609. However, the appellant does not have any documentation in relation to this incident.
12. The appellant also produces four letters in support of his case. The letter from Mr David Khan dated 5 December 2020 uses some of the wording set out in the Statutory Declarations Act 1835 but it has not been witnessed by or signed in the presence of a solicitor, commissioner for oaths or notary public. It is therefore not a Statutory Declaration, which lessens the weight I can afford to it.
 13. In terms of its contents, Mr Khan's letter indicates that the caravan was present on site on 2 October 2010. He then states that he has regularly visited the caravan over ten years, and that there have always been containers and other storage units on the land. Unfortunately, this evidence is vague, giving little idea of what is meant by 'regularly'. This could equally mean, for example, once a week or once a year, as each of these could be considered regular occurrences. Mr Khan's statement is therefore insufficient to show that the presence of the caravan on the land was continuous for planning purposes over the course of ten years.
 14. In an undated statement, Mr Stewart Barber says that he has passed the appeal site on a daily basis for some time, and states that a caravan and storage units have been on the land for in excess of 10 years. However, his evidence is ambiguous in that it does not specify the ten year period he is referring to.
 15. The letter from Mr Tony Swidenbank is dated 2 December 2020. He states that he has been going to the field for at least twelve years for work purposes. In 2008, he attended a machinery development demo and remembers that the cabins and caravan were on site as he had refreshments in the caravan. Mr Michael Shaw's letter of 6 December 2020 states that he is a friend of the appellant and has attended the site for more than ten to twelve years.
 16. These statements are notably brief and lacking in detail. They are not sworn statements, which reduces the weight I can afford them. With the exception of a caravan, they are vague with regard to the items that have been stored on the site, and none of them refer specifically to the green electricity cabinet. Even if I accept, on the basis of the evidence, that there has been some use of the land for storage of the caravan and other structures, these sparse accounts fall significantly short of demonstrating the continuous presence of the unauthorised items on site during the course of the material ten year period.
 17. The appellant argues that the electricity box amounts to operational development and is therefore subject to the four year time limit. If this argument is accepted, then the electricity box needs to have been in place on or before 12 November 2016 to be immune from enforcement action.
 18. The appellant states that the green electricity cabinet was installed in 2015. I have had regard to the email from Npower dated 27 January 2015. This document makes reference to a 'meter' and confirms an electricity agreement with the Briggs. However, there is nothing in this document that links it to the address of the appeal site, or to confirm the date or time at which the cabinet was installed. It therefore does not convincingly demonstrate that the cabinet has been on site for long enough to avoid enforcement action.

19. I have had regard to the 2000 planning permission for 'Erection of storage building, polytunnel and creation of car park' at the appeal site (ref: 7/2000/5436). The Authority states that there is no evidence that this permission was implemented, and the appellant does not dispute this stance. That being the case, the granting of this permission some twenty years ago does little to assist the appellant in demonstrating that his own development is immune from enforcement action.
20. The onus is on the appellant to demonstrate his case, on the balance of probability, and in precise and unambiguous terms. To my mind, he has failed to meet the appropriate test.
21. The appeal on ground (d) fails.

The appeal on ground (g)

22. The appeal on ground (g) is that the period of three months given to comply with the notice is too short. Instead, the appellant seeks an extension of the compliance period to four months.
23. This is on the basis that four months is needed to organise the removal of the site cabin, caravan, timber shed and green metal electricity cabinet. More time is also needed for new storage premises to be found and for an electrical engineer to remove the cabinet.
24. The Authority have indicated that they have no objection to the extension of the compliance period to four months. I agree that this timescale is reasonable, and so to that extent, the appeal succeeds on ground (g). I have directed that the enforcement notice be varied accordingly.

Conclusion

25. For the reasons above, I conclude that the appeal should be dismissed. I shall uphold the enforcement notice, with variations.

Elaine Gray

INSPECTOR