



Appeal Decisions

Hearing Held on 11 May 2021

Site visit made on 14 May 2021

by **M Madge DipTP, MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 29th June 2021

Appeal A: APP/F4410/C/20/3255529

Appeal B: APP/F4410/C/20/3255614

Land adjacent to 58 Beckett Road, Wheatley, Doncaster DN2 4AJ

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- Appeal A is made by Mr Nigel Wroe on behalf of South Yorkshire Tyre Centre Ltd and Appeal B is made by Mr Nigel Wroe against an enforcement notice issued by Doncaster Metropolitan Borough Council.
- The enforcement notice, numbered L/SC/82571, was issued on 27 May 2020.
- The breach of planning control as alleged in the notice is without planning permission a change of use of the land to an open air tyre storage facility.
- The requirements of the notice are:
 - (i) Cease the use of the Land for a tyre storage facility;
 - (ii) Remove all tyres from the Land.
- The period for compliance with the requirements is 6 months for step (i) and 7 months for step (ii).
- The appeal is proceeding on the grounds set out in section 174(2) (c), (d), (e), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeals are allowed following variation of the enforcement notice in the terms set out in the Formal Decision.

Preliminary matters

1. Since the notice was issued the Council has refused a lawful development certificate (application ref: 20/01214/CPE) for the use of this land for tyre storage and stock for retail. The Council has however granted a lawful development certificate (application ref: 20/01718/CPE) (the 2020 LDC) for the use of land for storage and parking on site of demolished toilet block, which adjoins the appeal site. In respect of the lawful development certificate that has been granted, the Council concluded that its physical and functional integration with the tyre fitting business taking place at 52 Beckett Road made it part of a single planning unit.
2. The notice complies with Regulation 4(c)¹ in that the precise boundaries of the land to which the notice relates are identifiable from the plan and as specified in section 2 of the notice. The words '*The land situate and known as*' are however superfluous and their deletion would not cause injustice to any party. The land affected shall read 'Land adjacent 58 Beckett Road, Wheatley, Doncaster DN2 4AJ'. In addition, for precision, the description should allege a "material" change of use to accurately reflect s55(1) of the 1990 Act. That is what I shall do.

¹ Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002/2682

Ground (e) appeal

3. The appellants argue that the notice was not served on Mr Nigel Wroe as landowner and the copy served on South Yorkshire Tyre Centre Ltd (SYTC) was not served at their registered address. The Council accept that they did not serve the notice on Mr Nigel Wroe, and claim the notice served on SYTC at their trading address, which is 52 Beckett Road, as occupier of the land.
4. It is clear from the evidence before me that Mr Nigel Wroe and SYTC knew about the enforcement notice as they have been able to lodge these appeals. While they may have suffered some hardship in respect of ensuring the appeals were lodged in time, I am satisfied that they have not been substantially prejudiced by the Council's failure to serve notice on all affected parties or the manner in which SYTC was served.
5. The appeals on ground (e) fail.

Ground (c) appeal

6. To succeed on this ground the appellants must prove on the balance of probability that, while the open-air storage of tyres has occurred, this does not represent a breach of planning control as it benefits from planning permission or it does not represent development.
7. SYTC occupies No 52, on a leasehold basis. The unit is limited in size and I saw that it has little room to accommodate tyre storage, which lends credibility to the appellants case that the site has always been used for storage purposes ancillary to the occupation of No 52.
8. It is claimed that the planning unit from which the tyre fitting business operates is made up of 3 parcels of land; the unit at No 52, the adjacent land for which the 2020 LDC has been issued, and the appeal site. As the open-air tyre storage is ancillary to the tyre fitting business the appellants claim that it does not represent a material change of use of the land.
9. The planning unit is '*a concept which has evolved as a means of determining the most appropriate physical area against which to assess the materiality of change, to ensure consistency in applying the formula of material change of use. The general rule has always been that the materiality of change should be assessed in terms of the whole site concerned...*'². Usually the planning unit is the unit of occupation, unless a smaller area can be identified which, as a matter of fact and degree, is physically separate and distinct, and/or occupied for different and unrelated purposes.
10. *Burdle*³ suggests that there are 3 broad categories of distinction for determining the correct planning unit. The first, which applies in this case, can be described as a single planning unit where the unit of occupation has one primary use and any other activities are incidental or ancillary. In this case, the single main purposes of SYTC's use is as a tyre fitting business. Incidental or ancillary to that tyre fitting business is the storage of tyres.
11. SYTC does not trade in brand new tyres and as a result it bulk buys partially used tyres, which need to be stored. Given the limited size of No 52, the majority of the partially used tyres need to be stored elsewhere. While

² Encyclopaedia of Planning Law P55.44

³ *Burdle v Secretary of State for the Environment* [1972] 1 WLR 1207 (Div Court)

No 52 may not be physically joined to the appeal site, it is located within a matter of metres. Transferring tyres between the site and No 52 would be undertaken manually, without use of a vehicle, and it would only take a few minutes. While these areas are physically separate, they are functionally connected. The site physically adjoins the 2020 LDC land, and there can be no dispute that storage and parking associated with the tyre fitting business is lawful on that land. For these reasons, the appeal site is physically and functionally connected to the tyre fitting business operated by SYTC and I find that the planning unit consists of the appeal site, the adjoining land and No 52.

12. The Council confirmed that the use of No 52 as a tyre fitting business would have been a material change of use and this was not disputed. The evidence confirms that there is no planning permission for the use of No 52 as a tyre fitting business. Whether SYTC's use has achieved immunity from enforcement action will be discussed later. Notwithstanding that the appeal site forms part of the tyre fitting business' planning unit, express planning permission was required for the material change of use to a tyre fitting business and it was not obtained. While the use of the appeal site for open air tyre storage purposes is ancillary to the tyre fitting business and it is part of the same planning unit, the matters alleged have occurred and as no express planning permission exists the breach of planning control has occurred.
13. For the reasons given above, the appeals on ground (c) fail.

Ground (d) appeal

14. The appeal is that at the date of the notice was issued it was too late to take enforcement action against the breach of planning control due to the passage of time. For the purposes of assessing immunity in respect of a breach of control consisting of the material change of use of land, the relevant period is 10 years starting with the date of the breach.
15. In pursuing an appeal on this ground, the burden of proof is on the appellant. The appellant must therefore demonstrate, on the balance of probability, that the use of the planning unit, as established above, had taken place by or before the material date, which is 27 May 2010, and that it was continuous, without material interruption, for at least 10 years after the date of change.
16. Evidence provided by the appellants confirms that SYTC has leased No 52 and operated their tyre fitting business since the mid-1990s. While tyres may have been stored on the appeal site before then, the primary use of the appeal site at that time was as a vehicle repair workshop and compound, unrelated to the tyre fitting business. The appeal site was used only as ancillary storage facilities by SYTC following the destruction of the vehicle repair workshop by fire in April 1997. A specific date has not been provided for the demolition of the vehicle repair workshop, and while a formal lease agreement for the appeal site was not signed until 2007, there is no evidence before me to contradict the sequence of events outlined in the sworn declarations provided by Mr Nigel Wroe and Mr Ian Wroe, as corroborated by Mr Gary Wilcox's statement.
17. The evidence before me confirms that No 52 was leased for use by SYTC from May 1995, and for that reason I concur with the Council that the use of No 52 as a tyre fitting business has been carried out for longer than 10 years and has achieved immunity from enforcement action. A formal lease of the appeal site was entered into by the Wroe brothers on 1 August 2007 and the evidence

demonstrates, on the balance of probability, that the ancillary storage use had occurred before that date. Even if I were to find that the ancillary use had not commenced until 1 August 2007, that is still more than 10 years before the notice was issued.

18. Having regard to *Thurrock*⁴ and *Swale*⁵, there is no suggestion that there has been any period since the mid-1990s when the tyre fitting business has not operated from this planning unit. As such, there was no period within which the Council could not have taken enforcement action.
19. A series of aerial and street view Google images were provided by the Council. These images provide snapshots in time of the appeal site. In many, the whole site is not visible due to the angle from which the image was taken or due to tree canopies obscuring the land. The appellants pointed out the presence of a section of tyre racking in several aerial images, dating from 2008. While this tyre racking cannot be clearly discerned in the images, it was pointed out at the site visit. This section of racking is different in age and appearance to the others, which are discernible in the later images. The extent of the racking and number of tyres stored may have changed over time, however the fluctuations in the intensity of tyre storage on the appeal site is inherent to the way the tyre fitting business operates. This does not change the fact that the tyre storage is ancillary to the tyre the fitting business.
20. In drawing all the relevant factors together, I find that the use of the land for open-air tyre storage facilities ancillary to the tyre fitting business occurred before 27 May 2010. It has been used as such for a continuous period of 10 years without significant interruption.
21. For the reasons given above, the appeals on ground (d) succeed.

Overall conclusion

22. On the balance of probabilities, the appeals on ground (d) shall succeed in respect of those matters which are stated as constituting the breach of planning control. The enforcement notice shall be varied and quashed. In these circumstances, the appeals on grounds (f) and (g) do not need to be considered.

Formal decision

23. It is directed that the enforcement notice is varied by:

The deletion of the words 'The land situate and known as' in section 2 THE LAND AFFECTED, and the deletion of the words 'change of use' and the substitution of the words 'material change of use' in section 3 THE BREACH OF PLANNING CONTROL.

Subject to the variations, the appeals are allowed, and the enforcement notice is quashed.

M Madge

INSPECTOR

⁴ *Thurrock BC v SSETR & Holding* [2002] EWCA Civ 226

⁵ *Swale BC v FSS & Lee* [2005] EWCA Civ 1568

APPEARANCES

FOR THE APPELLANT:

Nigel Wroe

Ian Wroe

FOR THE LOCAL PLANNING AUTHORITY:

Owain Herring
Apprentice Enforcement Officer

Doncaster Metropolitan Borough Council

David Richards
Principal Planning Officer

Doncaster Metropolitan Borough Council

DOCUMENTS

- 1 Commercial Lease Agreement – date of lease 1 August 2007