

Appeal Decision

Hearing Held on 15 July 2021

Site visit made on 22 July 2021

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH

an Inspector appointed by the Secretary of State

Decision date: 15th September 2021

Appeal Ref: APP/N5090/C/20/3264986

Land at Rear of 14 Hadley Highstone, Barnet EN5 4PU

- 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 Ylli Alla against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The enforcement notice, numbered ENF/1269/20, was issued on 3 November 2020.
 - The breach of planning control as alleged in the notice is without planning permission, the making of a material change of use of the land to use for storage (including of a portable cabin, car components and waste materials).
 - The requirements of the notice are to: 1 Cease the use of the land for storage. 2 Remove the portacabin. 3 Remove all car components. 4 Remove all other waste. 5 Permanently remove all constituent materials resulting from the works in 1., 2., 3. and 4. above from the property.
 - The period for compliance with the requirements is 1 month.
 - The appeal is proceeding on the grounds set out in section 174(2) (b) (d) and (e) of the Town and Country Planning Act 1990 as amended (the Act).
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Decision

1. It is directed that the enforcement notice be corrected by:
 - substituting "title number NGL691513" for "shown edged and hatched black on the attached plan" in paragraph 2; and by
 - deleting the plan attached to the notice.
2. Subject to these corrections, the appeal is dismissed and the enforcement notice is upheld.

Application for costs

3. An application for costs was made by Mr Ylli Alla against the Council of the London Borough of Barnet. This application is the subject of a separate Decision.

Procedural Matters

4. The appellant has previously been served with 2 similar enforcement notices in respect of the site (albeit one subsequently withdrawn, and neither were determined on appeal). He alleges that the history of notices is an "abuse of process" as regards the appeal now before me. However, it is established law that s172 of the Act does not prevent a Local Planning Authority from issuing further notices in respect of the same breach or in similar terms as a previous

notice¹. Further, I do not agree with the appellant that there is a violation of his human rights² since he is exercising his right of appeal under s174 of the Act and has been afforded a full and fair opportunity to make representations at the Hearing and otherwise throughout the Hearings Procedure.

5. The appellant argues that Ms Bernard and Mr Sutherland-Thomas should have provided signed statements of truth through which their evidence might be adduced. However, the Council had provided an appropriate hearing statement under Rule 5 of the Hearings Procedure Rules³ and there was nothing unfair or inappropriate in the Council officers speaking at the Hearing as regards the evidence it contained, or in responding to the appellant's arguments. I place no significance on the fact that the officer report was unsigned, and Ms Bernard as the author confirmed at the Hearing that it was effectively signed-off by the practice of emailing it to her manager upon completion.
6. The appellant has implied that the Council did not follow proper procedures when issuing the notice. The Council has disputed that suggestion. In any respect I do not have jurisdiction to deal with that issue as I may only find a notice a nullity if the defect is evident on the face of the document⁴.

Ground (e)

7. An appeal on this ground is made on the basis that copies of the enforcement notice were not served as required by s172 of the Act. That section requires that copies should be served on the owner and occupier of the land to which the notice relates, and on any other person having an interest in the land being an interest which in the opinion of the authority is materially affected by the notice.
8. The notice plan highlights land owned by the appellant (title number NGL691513), upon which the portacabin is located and which he accepts is used for storage, as well as part of an accessway outside of his ownership. From the appellant's submissions, it appears that the accessway is within the same ownership of 12 Hadley Highstone (No 12) and with rights of way to 14, 16 and 18 Hadley Highstone (Nos 14, 16, 18).
9. On 12 January 2021, the Council wrote to the owners and occupiers of Nos 12, 14, 16 and 18 and advised them how they can make representations to me about the notice and/or appeal. While this is outside of the 28 days from the date of issue stipulated by s172, I may disregard that fact by virtue of s176(5) if I consider that neither the appellant or a person not served has not been substantially prejudiced. Given the Council's notifications in January, and as is consistent with case law⁵, I consider that the invitation to all relevant persons to make representations in the appeal has not resulted in any substantial prejudice to any party. Accordingly, the appeal on ground (e) does not succeed.
10. Nevertheless, as it appears that the allegation is confined to the land in the ownership of the appellant, I am using my powers to correct the notice to that effect without injustice to any party.

¹ Edwick v Sunbury on Thames UDC [1964] 63 LGR 204; Biddle v SSE & Wychavon DC [1999] 4 PLR 31

² To a fair trial and no punishment without law

³ The Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002

⁴ R v Wicks [1997] JPL 1049

⁵ Mayes v SoS for Wales [1989] JPL 848

Ground (b) (and “hidden” ground (c))

11. For an appeal to succeed under ground (b), the appellant must demonstrate on the balance of probabilities that the matters as stated in the notice have not occurred. The appellant says that he uses the land as storage including the stationing of a portacabin, while car components and waste materials are the results of dumping by others. While it may be the case that others may be responsible for the initial presence of ‘dumped’ items, it seems to me that the character of the use of the land is for storage as alleged by the Council and largely accepted by the appellant. Therefore, the appeal under ground (b) must fail.
12. It appears however from the appellant’s submissions that what he is arguing is that his use of the land for storage is not a breach of planning control. This is more suited to an appeal under ground (c) of s174(2) of the Act. The appellant says that there has not been a material change of use requiring planning permission. While the burden of proof is on him under this ground, he has provided very limited substantive evidence to show that a material change of use has not occurred in the face of a planning history showing permissions for a car park and a garage. The 2003 Google photograph submitted by the appellant appears to show cars parked on the land, and is not persuasive that the land’s use was for storage. The judgment of *Hickmet*⁶ in the Court of Appeal confirmed that the two concepts of parking and storage are distinct and mutually exclusive.
13. Further, while the appellant says that the use of the site is “sui generis” this does not demonstrate that a material change of use has not resulted in the current use.
14. For the above reasons, I am not satisfied on the balance of probabilities that a breach of planning control has not occurred. Accordingly, an appeal on ground (c) does not succeed.

Ground (d)

15. For an appeal to succeed under this ground, the appellant must demonstrate on the balance of probabilities that at the date the notice it was issued no enforcement action could be taken in respect to the breach of planning control constituted by the matters stated in the notice.
16. Section 171B(3) provides that no enforcement action may be taken after the end of the period of 10 years beginning with the material change of use without planning permission.
17. The appellant says that he purchased the plot on 4 November 2015 and has been using it for storage since then. While he says there has not been a change of use in the last 6 years, he has not provided any substantive evidence to show that the material change of use I have found to have occurred under ground (c) was continuous for at least 10 years before the issue of the notice.
18. The appellant has raised the cases of *Jarmain*⁷ and *Fidler*⁸ but they are of no assistance as they concern the use of the ‘second bite’ provision under

⁶ *Crawley Borough Council v. Hickmet Limited* [1998] 75 P.& C.R. 500

⁷ *Jarmain v SSETR & Welwyn Hatfield DC* [2000] EWCA Civ 126

⁸ *Fidler v FSS & Reigate and Banstead BC* [2003] EWHC 2003 (Admin)

s171B(4)(b) of the Act, and my finding is that the notice under appeal was issued within time under s171B(3) of the Act.

19. Accordingly, the appeal under ground (d) fails.

Conclusion

20. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections.

Andrew Walker

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Andreas Alexandrou, HACG Consultancy Ltd, agent

FOR THE LOCAL PLANNING AUTHORITY:

Antoinette Bernard, Noise and Nuisance Officer

Iain Sutherland-Thomas, Planning enforcement manager

INTERESTED PERSONS: None wishing to speak

DOCUMENTS – Judgment Transcripts

- 1 Jarmain v SSETR & Welwyn Hatfield DC [2000] EWCA Civ 126
- 2 Fidler v FSS & Reigate and Banstead BC [2003] EWHC 2003 (Admin)
- 3 Crawley Borough Council v. Hickmet Limited [1998] 75 P.& C.R 500